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SAN FRANCISCO ETHICS COMMISSION GOVERNMENT
NOTICE OF REGULAR MEETING DOCUMENTS DEPT

January 26, 2015, 5:30 P.M.

JAN 22 2015

and AGENDA

Room 400 City Hall

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1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Discussion and possible action on a matter submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance. Under Chapter Two of the Regulations, the Respondent bears the burden of showing that he or she did not commit a violation of the Sunshine Ordinance. In a show cause hearing, the votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. Respondents and Complainants may speak on their own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. (Attachments: for the matter listed, copies of all documents received from the Sunshine Ordinance Task Force, notice letters from Commission staff to the Respondent and Complainant, and any documents submitted to the Commission by the Respondent and Complainant; a copy of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance and a copy of the Sunshine Ordinance, Chapter 67 of San Francisco Administrative Code.)

- a) Ethics Complaint No. 01-140107
Complainant: Allen Grossman
Respondent: John St. Croix, Executive Director, Ethics Commission

IV. Discussion and possible action regarding the approval of proposed amendments to the San Francisco Campaign Finance Reform Ordinance, which are intended to update and streamline certain reporting and disclaimer requirements, as well as to repeal certain contribution limits. (Attachments: Staff Memoranda including Exhibits.)

V. Discussion and possible action on Ethics Commission budget. By February 23, 2015, all departments must submit their budget requests to the Controller's Office. At this meeting, the Commission will review staff's recommendations and possibly

provide guidance in preparing the budget submission for FY 2015-16 and FY 2016-17. (Attachment: January 21, 2015 staff memorandum.)

VI. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission. Possible Closed Session.

- a. Public comment on all matters pertaining to Agenda Item VI, including whether to meet in closed session.
- b. Vote on whether to assert attorney-client privilege and meet in closed session under Charter section C3.699-13, Brown Act section 54956.9 and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff: 1) San Francisco Campaign and Governmental Conduct Code section 3.216 (receiving a prohibited gift from a restricted source); and 2) California Government Code sections 84200(a) (failure to file semi-annual Form 460), 84104 (failure to maintain campaign records), and San Francisco Campaign and Governmental Conduct Code section 1.118 (failure to pay expenditures within 180 days). (Action.)
- c. Conference with Legal Counsel: Anticipated litigation as plaintiff. (Discussion and possible action.)

Number of possible cases: 2

- d. If closed session is held, reconvene in open session.
- e. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation as plaintiff. (Discussion and possible action.)

Motion: The Ethics Commission moves (not) to disclose its closed session deliberations re: anticipated litigation.

VII. Discussion and possible action on the minutes of the Commission's meeting of December 16, 2014. (Attachment: December 16, 2014 draft minutes.)

VIII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)

IX. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

X. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is accessible to persons using wheelchairs and other assistive mobility devices. Ramps are available at the Grove, Van Ness and McAllister entrances. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

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Language Access: Per the Language Access Ordinance (Chapter 91 of the San Francisco Administrative Code), Chinese, Spanish and or Filipino (Tagalog) interpreters will be available upon requests. Meeting Minutes may be translated, if requested, after they have been adopted by the Commission. Assistance in additional languages may be honored whenever possible. To request assistance with these services please contact at (415) 252-3100 or ethics.commission@sfgov.org at least 48 hours in advance of the hearing. Late requests will be honored if possible.

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FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

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ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JAN 22 2015

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BENEDICT Y. HUR
CHAIRPERSON

Date: January 21, 2015

PAUL A. RENNE
VICE-CHAIRPERSON

To: Members, Ethics Commission

BRETT ANDREWS
COMMISSIONER

From: Jesse Mainardi, Deputy Executive Director *Jm*

BEVERLY HAYON
COMMISSIONER

Re: **Show Cause Hearing – Ethics Complaint 01-140107**

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

A Show Cause Hearing in the matter referenced above is scheduled to occur during the next regular Ethics Commission meeting at 5:30 PM on Monday, January 26, 2015, in Room 400 in City Hall. The hearing concerns a referral letter and an Order of Determination ("Order") delivered by the Sunshine Ordinance Task Force ("Task Force") to the Ethics Commission on November 21, 2013 regarding a complaint Allen Grossman filed against John St. Croix, Executive Director of the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Mr. St. Croix as the Respondent. This matter was previously continued pending the resolution of related litigation, as set forth below.

Background

According to the Order, Allen Grossman filed a complaint with the Task Force on November 19, 2012 against the Respondent and alleged that the Respondent failed to fully respond to his public records request dated October 3, 2012. The Complainant alleged violations of public records laws, specifically including Sunshine Ordinance sections 67.21(b), 67.27(a)&(b), and 67.24(b)(1)(i)&(iii). The Task Force heard the matter on June 5, 2013 and found Sunshine Ordinance section 67.21(b) and 67.24(b)(1) to be applicable to this case. The Task Force found that the requested records "are disclosable" and that Respondent violated section 67.21(b) for failure to provide the records within ten days following receipt of a request and section 67.24(b)(1) for withholding records subject to disclosure.

The Order was issued on June 24, 2013 and Respondent was ordered to release the records and appear before the Compliance and Amendments Committee on August 20, 2013. The Compliance and Amendments Committee heard the matter on August 20, 2013 and referred the matter back to the Task Force.

On September 4, 2013, the Task Force heard the matter again. According to the referral letter, the Task Force moved to find Respondent in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics

Commission for “violating Sections 67.21(b), 67.27(a)(b) [sic], and 67.24(b)(1) (i)&(iii).” On January 27, 2014, the Board of Supervisors notified the Ethics Commission that it had closed this matter after taking no action.

On January 8, 2014, Respondent requested a continuance as the referral alleged violations of the Sunshine Ordinance that were also before the Court of Appeal of the State of California, First Appellate District (appeal from the Superior Court of California, Case # CPF-13-513221), in litigation originally initiated by the Complainant. Chairperson Hayon granted the request for a continuance on January 10, 2014. The Court of Appeal issued its decision on the matter on July 28, 2014 in favor of the Respondent, and the Supreme Court of California denied Complainant’s Petition for Review on November 12, 2014. Due to notice requirements and the cancellation of the Ethics Commission’s regular meeting in December 2014, the January 2015 regular meeting of the Ethics Commission is the first opportunity following the Supreme Court’s denial to schedule this hearing.

Hearing Procedures and Scheduling

This matter will be heard under Chapter Two of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance (“Regulations”). This matter is scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, January 26, 2015**, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (*See* Regulations, Chapter Two, § II.B.) The Commission is required to deliberate on this matter in public and public comment will be allowed at the hearing. (*See* Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding must be supported by findings of fact and conclusions of law and must be based on the entire record of the proceedings. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter Four, section I.E, then the Commission may make a decision in the party’s absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. Here, neither party has requested a continuance.

The Respondent and the Complainant may each speak on his or her own behalf at the hearing, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence do not apply to the hearing.

Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Any documents provided must be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Here, Complainant submitted documents to the Commission on January 14, 2015; Respondent submitted documents to the Commission on January 16, 2015.

Copies of all of the documents received from the Task Force regarding this matter and both parties' written submissions have been attached to this memorandum; a copy of the Regulations is also attached.

Argumedo, Catherine (ETH)

From: Allen GROSSMAN <grossman356@mac.com>
Sent: Wednesday, January 14, 2015 8:38 AM
To: Argumedo, Catherine (ETH)
Cc: Mainardi, Jesse (ETH)
Subject: Re: Ethics Commission SHOW CAUSE HEARING on January 26, 2015
Attachments: ShowCause- Memo 1-15-2010.pdf; ATT00001.htm

Ms. Argumedo,

Attached please find my Memorandum (dated January 15, 2015) to the Commissioners with reference to the scheduled show cause hearing. Please deliver a copy of the Memorandum to each of the Commissioners and to Mr. St. Croix.

Thank You,

Allen Grossman

MEMORANDUM

TO: San Francisco Ethics Commissioners,
Benjamin Hur, Esq. (Chair),
Paul A. Renne, Esq. (Vice-Chair),
Brett Andrews,
Beverly Hayon and
Peter Keane, Esq.

FROM: Allen Grossman

DATED: January 15, 2015

RE: Ethics Commission Show Cause Hearing, January 26, 2015

In November 2013 the Sunshine Ordinance Task Force ("Task Force") Order of Determination ("Order") against the Commission's Executive Director John St. Croix ("Mr. St. Croix") was referred to the Ethics Commission ("Commission") for enforcement. The Order was issued on my complaint that Mr. St. Croix's refusal to disclose certain communications with the City Attorney's Office violated the San Francisco Sunshine Ordinance ("Sunshine Ordinance"). On Monday, January 26, 2015, there will be a Show Cause Hearing (the "Hearing") whether to enforce the Order.

There are a number of related issues necessarily involved in the Hearing that must be addressed and resolved before the Commission hears the enforcement issue. These issues are:

(1) The Commission's Conflicts of Interest

The first: When the Commission sits as a quasi-judicial tribunal under its own promulgated Regulations deciding whether the Task Force's Order should be enforced, the Commission is in fact judging whether the Commission itself violated the Sunshine Ordinance provisions identified in the Order, because it has a direct conflict of interest. That conflict exists because the Commission is responsible for all the actions of the Respondent, Mr. St. Croix, under the Charter Appendix Section C3.699-11, which states that the Commission has *"... full charge and control of its office, to be responsible for its proper administration, subject to the budgetary and fiscal provisions of the charter."*

The second: Moreover, even without the Charter provision, the Commission has an obvious conflict if it were to decide whether or not to enforce the Task Force's Order against the Executive Director whom it appointed and whose actions before the Task Force the Commission never authorized.

The third: In September 2013, I filed a Sunshine Ordinance §67.34 "willful violation" complaint (the "§67.34 Complaint") with the Commission based on the same facts as the Task Force's referral and Order, except under the Commission's own Regulations the procedure requires Mr. St. Croix to investigate that §67.34 Complaint and make a recommendation to the Commission. The Commission could not act on his recommendation nor could one expect that any of his staff act to do so in place of his or her boss, Mr. St. Croix, for obvious reasons.

(2) The Attorney-Client Privilege and Waiver Issues

The attorney-client privilege protects the confidentiality of communications between an attorney and that attorney's client. Here the "client" is the Commission itself because the "privileged" communications related to its proposed draft Regulations governing the enforcement of Task Force referrals and §67.34 complaints. The privilege is not an absolute prohibition on disclosure; it is a privilege that can be waived. The Commission could have expressly waived it with respect to any or all the withheld records. However, the Commission was never given that opportunity by Mr. St. Croix, who kept the Commission in the dark about the dispute regarding the withheld records. He easily could have notified the Commission of that right by properly agendizing it at a public meeting.

In any case, such a submission to the Commission is not needed here, because, even if the statutory provision was unenforceable, the Commission had already waived the privilege with respect to those communications between the City Attorney and the Commission when it adopted its Bylaws. The relevant Bylaws are:

Bylaw Article I, Section 3, which provides in part that the "*Commission shall comply with all applicable laws, including, but not limited to, the San Francisco Charter, San Francisco Sunshine Ordinance (Administrative Code sections 67.01 et seq.), the Ralph M. Brown Act (Government Code sections 54950 et seq.)*" and

Bylaw Article II - 2) which provides that the Commission will "*actively enforce all ethics laws and rules, including campaign finance and open government laws*". (Emphasis added.)

In view of that waiver, there is no need to conduct the Hearing. The Commission should direct Mr. St. Croix to disclose the withheld records without further delay.

(3) Mr. St. Croix's Usurpation of the Commission's Legal Responsibilities

As of today, there is no accessible public record disclosing that the Commission authorized Mr. St. Croix to assert and defend a claim of the attorney-client privilege on behalf of the Commission at any time in response to (a) my records request, (b) before the Task Force, (c) in the Superior Court, (d) by filing a Mandamus Petition on its behalf in the Court of Appeal, or (e) opposing my Petition to the Supreme Court. Those "authorizations" were "actions" under Brown Act Section 54952.2(b)(1):

"A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

The whole idea behind open public meetings is "deliberation." The public is entitled to the best thinking of a group of individuals with full information, comments from the public, and open discourse.

In fact, from the time that my records request was first submitted in October 2012, through the Commission's meeting of May 28, 2014, when Mr. St. Croix agendized a "Discussion and possible action regarding pending litigation as defendant, Grossman v. John St. Croix, Executive Director, and San Francisco Ethics Commission ... Possible Closed Session," it appears that the Commission had not been "officially" advised of my original October 2012 request, any of the three Task Force

hearings, the Task Force Referral, my Superior Court petition, the Commission's defense of that petition, the Commission's mandamus petition in the Court of Appeal, or, for that matter, my §67.34 Complaint filed directly with the Commission. That agenda item was continued to the Commission's June 23, 2014 meeting. According to the Commission's minutes there was no action authorized in that closed session. Mr. St. Croix's failures to seek multiple authorizations from the Commission for his many actions in its name violated several provisions of the Brown Act and the Sunshine Ordinance. In other words, he ignored the statutory mandated requirements to circumvent those two public access laws.

As noted previously, under the Charter Appendix section C3.699-11, among its other duties and responsibilities the Commission has "... *full charge and control of its office, to be responsible for its proper administration*, subject to the budgetary and fiscal provisions of the charter." Thus, the Commission is fully responsible for Mr. St. Croix's unauthorized actions and violations of the Brown Act and the Sunshine Ordinance. To reward him by holding the Hearing would protect him from any discipline or penalty for his actions.

(4) Where Does the Commission Go from Here?

The Commission cannot disavow two of its own Bylaws - Article I, Section 3 and Article II - 2) - either impliedly or directly, without a public meeting. For that reason instead of holding the Hearing at its January 26, 2015 meeting, the Commission should agendize and hold a hearing with public comment before either affirming or rejecting those two Bylaws. If it rejects those two Bylaws, it can then go into closed session and then review the 24 withheld records and determine whether to expressly waive its privilege with respect to some or all of those records.

In any case, because a provision of the Sunshine Ordinance is now unenforceable a result of the actions taken by Mr. St. Croix, ostensibly on its behalf, the Commission will have to either: (1) repudiate its Executive Director's actions and take whatever steps are necessary to restore the enforceability of that provision, or (2) amend the two cited Bylaw provisions to reflect that it will no longer (a) fully comply with the Sunshine Ordinance or the Brown Act (Bylaw Article I, Section 3), nor (b) "actively enforce all ethics laws and rules, including ... open government laws" (Bylaw Article II-2).

Although well over a year has passed since my §67.34 Complaint was filed, Mr. St. Croix, in his capacity as Executive Director, has not seen fit to inform the Commissioners of it, as far as I can tell. It seems to have just disappeared.

(5) The Litigation and the Task Force's Order

The Court of Appeal decision involved only one of Mr. St. Croix's violations, to wit: whether his assertion of the attorney-client privilege as the basis for withholding disclosure of some of the requested records was subject to Sunshine Ordinance §67.24(b)(1)(iii). The Court of Appeal ultimately ruled that this provision was "trumped" by the City Charter provision designating the City Attorney as the Commission's lawyer carried with it that privilege.

However, Mr. St. Croix's assertion of the attorney-client privilege was not the only issue before the Task Force and it is the other issues that will be before the Commission at the Hearing, if it goes forward. As noted in the Task Force's referral letter:

"At the September 4, 2013 SOTF meeting the Task Force found John St. Croix in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics Commission for violating Sections 67.21(b), 67.27 (a)(b) and 67.24 (b)(1) (i) &(iii)."

Sections 67.27(a) and (b) provide:

"Any withholding of information shall be justified, in writing, as follows:

"(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

"(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere."

Section 67.24(b)(1)(i) provides:

"(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

"(i) A pre-litigation claim against the City;..."

Because these other violations are involved, once the pre-Hearing issues are resolved, the Hearing should be directed at those.

(6) Background of the Show Cause Hearing

My records request was submitted on October 3, 2012. Mr. Steven Massey, the Commission's Information Technology Officer, responded by his October 12, 2012 letter noting that due to the volume of responsive records, they would be downloaded to a CD for me. He then added:

"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030."

He did not specify the number or nature of the records being withheld (e.g. email or Memoranda) or which of the claimed exemptions applied to which of those records.

By letter, I replied to him:

"Evidence Code §§952 and 954 create the "attorney-client privilege" and CCP §2018.30 creates two so-called "work product" doctrines, one absolute and the other conditional. Mr. St. Croix relies on these two exemptions to justify his withholding of certain unidentified public records. However, in the case of the conditional work product doctrine - §2018.30(b) - it is not clear whether it is even applicable when no litigation is involved.

"By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine."

Following a November 1, 2012 email to Mr. Massey requesting a response to my letter, Mr. St. Croix sent the following email the next day:

"Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed."

My Complaint with the Task Force was filed in November 2012. The Task Force heard it on June 5, 2013. At that hearing, which lasted over an hour, *Mr. St. Croix told the Task Force members that he did not know how many records were withheld or how many pages were in those records and that he had never read them.* The Task Force found that the withheld records were disclosable and entered an Order of Determination. Mr. St. Croix did not provide me with the records as ordered. At the Task Force's Compliance and Amendments Committee's August 20 2013 meeting, one of the Commission's staff lawyers attended on his behalf, Mr. St. Croix repeated his position. At the Task Force's September 4, 2013 meeting, *Mr. St. Croix again told the Task Force members that he would not provide any general information regarding the withheld records, did not know how many records were withheld, what exemptions applied to each of them and still had not read them.* The Task Force then found him in violation of §§67.21(b), 67.27(a) and (b) and 67.24(b)(1)(i) and (iii), as stated in the Referral Letter. (Emphasis Added.)

My Mandamus Petition to compel disclosure was filed in the Superior Court on September 18, 2013. In his October 2013 declaration supporting Mr. St Croix's Opposition to the Petition, Deputy City Attorney Shen stated:

"5. I have reviewed the documents previously withheld by the Commission in response to Petitioner Allen Grossman's October 3, 2012 public records request ... The Commission initially withheld a total of 28 documents responsive to Mr. Grossman's request.

"6. On October 9, 2013, I sent Michael Ng, counsel to Petitioner Grossman, four of those previously withheld documents that upon further review, are either (1) not subject to attorney-client privilege or attorney work product protection or (2) may be disclosed with minor redactions . . .

"7. At the current time, the Commission has continued to withhold a total of 24 responsive documents. Of these 24 documents, 15 documents — largely e-mails — constitute requests from the Commission's staff to the City Attorney's Office for legal advice concerning the Commission's proposed regulations for Sunshine complaints. The nine remaining documents respond to those inquiries and consist of advice from the City Attorney's Office to the Commission's staff on the proposed regulations. ..."

The Superior Court entered an Order requiring the disclosure of the remaining 24 records. At the hearing on my Mandamus Petition, Mr. Shen conceded that none of the 24 records was subject to the work-product exemption. That Order was the subject of the Commission's Mandamus Petition filed with the Court of Appeal on November 22, 2013.

The litigation cost the San Francisco taxpayers over \$150,000. That works out to about \$6250 for each of the 24 withheld records. To what end?

Argumedo, Catherine (ETH)

From: St.Croix, John
Sent: Friday, January 16, 2015 12:05 PM
To: Argumedo, Catherine (ETH)
Subject: Show Cause Hearing Response re: Grossman
Attachments: grossmanshowcauseresp1.26.15.pdf

John St. Croix
Executive Director
San Francisco Ethics Commission



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

January 16, 2015

Members, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 229
San Francisco, CA 94102

Dear Commissioners:

This is in response to the "Notice to Show Cause" memorandum dated December 12, 2014 regarding Ethics Complaint #01-140107. The history of this complaint is laid out in the memorandum.

The documents in question were never disclosable. This the San Francisco Charter made clear. Our advice from the City Attorney's office was also clear. When the request was made, we carefully reviewed the documents, disclosed 120 of them entirely, redacted some information from six and withheld 24 others (asking for and receiving legal advice from the City Attorney's office). These actions are entirely justified.

Based on the judicial history of this complaint, I respectfully request that the Ethics Commissioners make a finding of no violation in this case. The essence of this matter is the applicability of attorney-client privilege to city agencies and the resolution lies in the question of whether the San Francisco Charter is superior to a local ordinance when they contradict.

In the hearing of this issue at the Superior Court, the notion of Charter superiority was not considered. Judge Goldsmith, in his initial ruling, stated "the fact that 67.24(b) conflicts with the City charter is just not before me." In this statement, he seems to acknowledge that the conflict exists. In any case, the California Court of Appeal First District disagreed with Judge Goldsmith and his eventual decision. By virtue of its refusal to hear an appeal, the California Supreme Court concurred. The courts are also clear that these documents are not disclosable.

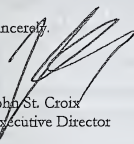
I would note in passing that, in addition to the Ethics Commission, this matter was referred for enforcement to the Board of Supervisors. No member of the Board requested a hearing on the matter, and the Clerk formally closed the referral with no further action planned on January 22, 2014.

It does not seem necessary to repeat here all of the material provided to the Commission in court and staff documents. At the time of the document request in question, we withheld a portion of requested documents based on the clear advice of the City Attorney's office.

Because the higher courts have agreed with the City's position that the Charter supersedes an ordinance and because the Charter provides for attorney-client privilege in this and similar situations, we were never obligated to disclose the documents in question and I ask for a finding of no violation in this case.

For your information, a copy of the Court of Appeal decision is attached, as the Supreme Court's notice of denied petition and the closure notice from the Board of Supervisors. The Remittitur was filed and the Superior Court's decision became final on December 3, 2014. The notice of this is also attached.

Sincerely,



John St. Croix
Executive Director

Cc: Alan Grossman

COPY

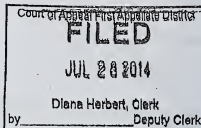
Filed 7/28/14

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE



JOHN ST. CROIX, as Executive Director,
etc., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF THE CITY
AND COUNTY OF SAN FRANCISCO,

Respondent;

ALLEN GROSSMAN,

Real Party in Interest.

A140308

(San Francisco City & County
Super. Ct. No. CPF-13-513221)

San Francisco resident Allen Grossman, relying on state and local public records laws, sought to obtain from John St. Croix, executive director of the San Francisco Ethics Commission (Ethics Commission or commission), documents pertaining to the development of certain commission regulations. St. Croix provided more than 120 documents, but, citing the attorney-client privilege (see Evid. Code, §§ 952, 954), withheld 24 written communications between the commission and the San Francisco City Attorney's Office.

Grossman argued, and the trial court held, that a provision of the San Francisco Sunshine Ordinance (Sunshine Ordinance or ordinance) (S.F. Admin. Code, ch. 67) required disclosure of the documents, even if they otherwise would be protected by the privilege. St. Croix and the commission (to whom we sometimes refer collectively as City) petition for a writ of mandate, contending City's charter incorporates the attorney-client privilege and supersedes any contrary ordinance provision. We agree, and we hold

the trial court erred in ordering disclosure of the documents. We therefore grant City's writ petition.¹

I. BACKGROUND

In October 2012, Grossman submitted a request under the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.)² and the Sunshine Ordinance for documents relating to the commission's regulations governing complaints alleging violations of the ordinance. As part of this request, Grossman expressly sought production of written communications between the Ethics Commission and the city attorney's office. Grossman requested drafts of the commission's Sunshine Ordinance regulations, a September 14, 2012 staff report about the regulations, and all documents relating to "[t]he preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, *including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.*" (Italics added.)

St. Croix and his staff produced more than 120 documents, six of which were partially redacted. St. Croix withheld other documents in their entirety on the grounds they were protected by the attorney-client privilege and the attorney work product doctrine. The 24 withheld documents include (1) 15 written requests from the commission's staff to the city attorney's office for legal advice about the commission's proposed regulations, and (2) nine written responses by the city attorney's office to the commission's staff, providing advice about the proposed regulations.

Grossman petitioned for a writ of mandate in the trial court, arguing a provision of the Sunshine Ordinance (S.F. Admin. Code, § 67.24, subd. (b)(1)(iii)) compels disclosure of the documents at issue, even if they would otherwise be protected by privilege. That

¹ Because we conclude the documents are protected by the attorney-client privilege, we need not address City's argument that some of the documents are also protected by the attorney work product doctrine.

² All statutory references are to the Government Code unless otherwise stated.

provision of the ordinance states that, “[n]otwithstanding any exemptions otherwise provided by law,” the following documents are subject to disclosure under the ordinance: “(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance [(i.e., the Sunshine Ordinance)].” (S.F. Admin. Code, § 67.24, subd. (b)(1).)³

City opposed disclosure, contending the San Francisco City Charter (charter), which creates the office of the city attorney and specifies his or her duties, incorporates the attorney-client privilege, and the ordinance cannot validly modify the charter by barring City from asserting the privilege.

The trial court granted Grossman’s petition, holding San Francisco Administrative Code section 67.24, subdivision (b)(1)(iii) required production of the 24 attorney-client communications withheld by St. Croix. The court stated City’s argument that the charter superseded the ordinance provision, an issue that both parties had briefed and argued, was “not properly before” the court.

St. Croix and the commission petitioned this court for a writ of mandate (see § 6259, subd. (c)) and moved for a stay of the trial court’s order. We stayed the court’s order pending resolution of this writ proceeding, and later issued an order to show cause.

II. DISCUSSION

A. The Attorney-Client Privilege and Public Records Laws

Our Supreme Court has stated: “The attorney-client privilege, set forth at Evidence Code section 954, confers a privilege on the client ‘to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer’ The privilege ‘has been a hallmark of Anglo-American jurisprudence for

³ The trial court took judicial notice of San Francisco Administrative Code section 67.24. (See Evid. Code, § 452, subd. (b); *Madain v. City of Stanton* (2010) 185 Cal.App.4th 1277, 1280, fn. 1 [taking judicial notice of relevant portions of municipal code].)

almost 400 years.’ [Citation.] Its fundamental purpose ‘is to safeguard the confidential relationship between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding individual legal matters. [Citation.] . . . [¶] Although exercise of the privilege may occasionally result in the suppression of relevant evidence, the Legislature of this state has determined that these concerns are outweighed by the importance of preserving confidentiality in the attorney-client relationship. As this court has stated: “The privilege is given on grounds of public policy in the belief that the benefits derived therefrom justify the risk that unjust decisions may sometimes result from the suppression of relevant evidence.” [Citations.]’ [Citation.] ‘[T]he privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity or any particular circumstances peculiar to the case.’ ” (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 732.)

The scope and availability of the attorney-client privilege are governed by statute. (See Evid. Code, § 950 et seq.) “Courts may not add to the statutory privileges except as required by state or federal constitutional law [citations], nor may courts imply unwritten exceptions to existing statutory privileges.” (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373 (*Roberts*); see Evid. Code, § 911.)

In the context of public records requests, the CPRA expressly exempts from disclosure documents that fall within the statutory attorney-client privilege. The CPRA defines “public record” as a “writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (§ 6252, subd. (c).) The CPRA exempts certain public records from disclosure, including “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” (§ 6254, subd. (k).) “By its reference to the privileges contained in the Evidence Code, . . . the [CPRA] has made the attorney-client privilege applicable to public records.” (*Roberts, supra*, 5 Cal.4th at p. 370.)

In *Roberts*, the Supreme Court emphasized the importance of the attorney-client privilege in protecting the confidentiality of written communications between a public agency and its counsel. (*Roberts, supra*, 5 Cal.4th at pp. 380–381.) The *Roberts* court held that, although the Ralph M. Brown Act (Brown Act; § 54950 et seq.) establishes open meeting requirements applicable to local governing bodies (see §§ 54950, 54953) and abrogates the attorney-client privilege (with certain exceptions) for the purposes of those open meeting requirements (see § 54956.9), the Brown Act does not abrogate the privilege applicable to written communications under the CPRA. (*Roberts*, at pp. 373–374, 377.) The *Roberts* court rejected the argument that, in the public agency context, the attorney-client privilege should not apply or should be limited to situations involving pending litigation. (*Id.* at pp. 379–380.) Such arguments were “inconsistent with the decision of the Legislature in enacting the [CPRA] to afford public entities the attorney-client privilege as to writings to the extent authorized by the Evidence Code.” (*Id.* at p. 380.)

B. The Charter Incorporates the State Law Attorney-Client Privilege and Supersedes the Contrary Ordinance Provision

City argues provisions of its charter establishing the office and duties of the city attorney (1) incorporate the protections of the state law attorney-client privilege for written communications between the city attorney and his or her clients, and therefore (2) supersede the provision of the Sunshine Ordinance purporting to compel disclosure of documents falling within the scope of the privilege. We agree.

1. The Charter Incorporates the Privilege

“The City Charter represents the supreme law of the City and County of San Francisco, subject only to conflicting provisions in the United States and California Constitutions or to preemptive state law. [Citation.] The provisions of the City Charter supersede all municipal laws, ordinances, rules or regulations inconsistent therewith.” (*Stuart v. Civil Service Com.* (1985) 174 Cal.App.3d 201, 206.) “Generally, the same principles of construction applicable to statutes apply to the interpretation of municipal charters. [Citations.] The courts must always look first to the express language of the

statute to ascertain its meaning.” (*United Assn. of Journeymen v. City and County of San Francisco* (1995) 32 Cal.App.4th 751, 760.)

City’s charter designates the city attorney as an elected officer of City and specifies the duties of the office. (S.F. Charter, §§ 6.100, 6.102.)⁴ The charter states the city attorney must “[r]epresent the City and County in legal proceedings with respect to which it has an interest.” (S.F. Charter, § 6.102(1).) Under certain circumstances, the city attorney also must represent individual City officers and officials in litigation. (S.F. Charter, § 6.102(2).) The city attorney shall initiate litigation when “a cause of action exists in favor of” City. (S.F. Charter, § 6.102(3).) Significantly for the present case, the city attorney must, “[u]pon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of” City.⁵ (S.F. Charter, § 6.102(4).) The city attorney also must “[m]ake recommendations for or against the settlement or dismissal of legal proceedings” (S.F. Charter, § 6.102(5)) and must review and approve as to form “all surety bonds, contracts and, prior to enactment, all ordinances.” (S.F. Charter, § 6.102(6).) The charter requires the city attorney to establish a claims bureau “to investigate, evaluate and settle for the several boards, commissions and departments all claims for money or damages.” (S.F. Charter, § 6.102(9).)

The above charter provisions, by establishing the office and responsibilities of the city attorney, establish an attorney-client relationship between the city attorney on the one hand, and City and its officers and agencies (including the Ethics Commission) on the other. As noted above, state law establishes that the privilege’s protection of the

⁴ The trial court took judicial notice of section 6.102 of the San Francisco Charter. We grant the parties’ request that we take judicial notice of section 6.100 of the San Francisco Charter. (See Evid. Code, §§ 451, subd. (a) [judicial notice of city charter provisions], 459, subd. (a).)

⁵ In addition to this provision requiring the city attorney to provide advice to all boards and commissions, section 15.102 of the San Francisco Charter specifies the city attorney is the legal advisor to the Ethics Commission. We grant the parties’ request that we take judicial notice of sections 15.100 through 15.102 of the San Francisco Charter.

confidentiality of written attorney-client communications is fundamental to the attorney-client relationship, in the public sector as well as in the private sector, and is vital to the effective administration of justice. (See Evid. Code, § 950 et seq.; *Roberts*, *supra*, 5 Cal.4th at pp. 380–381.) We therefore conclude the charter incorporates the state law attorney-client privilege for written communications between the city attorney and his or her clients.

In reaching this conclusion, we are guided by *Welfare Rights Organization v. Crisan* (1983) 33 Cal.3d 766 (*Welfare Rights*), in which our Supreme Court emphasized the importance of confidential communications to a relationship similar to that between attorney and client. The *Welfare Rights* court concluded a statute (Welf. & Inst. Code, § 10950) authorizing recipients of public benefits to be represented by laypersons in administrative proceedings necessarily implied the existence of a privilege protecting communications between the lay representative and the client. (*Welfare Rights*, at pp. 770–771.) The statute specified a benefits applicant or recipient could appear “in person or through an authorized representative.” (*Id.* at p. 770, italics added by *Welfare Rights*.) The Supreme Court held that “the considerations which support the privilege are so generally accepted that the Legislature must have implied its existence as an integral part of the right to representation by lay persons.” (*Id.* at p. 771.) Similarly, here, we conclude the state statutory privilege’s protection of attorney-client communications is an integral part of the attorney-client relationship created by the charter.⁶

⁶ In addition to specifying the above duties of the city attorney, the charter states that, “[s]ubject to the powers and duties set forth in” the charter, the city attorney and other specified elective officers “shall have such additional powers and duties prescribed by state law for their respective office.” (S.F. Charter, § 6.100.) City argues this provision requires the city attorney to comply with state laws requiring attorneys to protect their clients’ confidences. (See Bus. & Prof. Code, § 6068, subd. (e)(1); Evid. Code, § 955; see also State Bar Rules Prof. Conduct, rule 3-100(A).) Because we conclude the charter’s specification of the city attorney’s duties creates an attorney-client relationship between the city attorney and City agencies, and incorporates the attorney-client privilege as an integral part of that relationship, we do not address whether section

Grossman argues we should construe the charter narrowly to avoid any limitation on the public's right of access. He cites article I, section 3, subdivision (b)(2) of the California Constitution, which states: "A statute, court rule, or other authority . . . shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. . . ." (See *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 312–313.) That provision does not assist Grossman. We have concluded above that the charter establishes an attorney-client relationship between the city attorney and City agencies. Grossman does not dispute that conclusion and does not claim that a narrower construction of the charter would produce a different result. Under state law, the attorney-client privilege is a "generally accepted" and "integral" part of the attorney-client relationship. (See *Welfare Rights*, *supra*, 33 Cal.3d at p. 771.) Accordingly, we have further concluded above that the charter necessarily incorporates the state law attorney-client privilege as a part of the attorney-client relationship it creates. That conclusion does not result from a broad construction of the charter's provisions (which unambiguously create an attorney-client relationship) and would not be altered by adopting a narrower construction of those provisions; instead, our holding just reflects the well-established centrality of the privilege to the attorney-client relationship.⁷

Grossman also contends we should construe the charter narrowly to avoid a conflict with the ordinance. But the case he cites, *People v. Kennedy* (2001) 91 Cal.App.4th 288, 290, 297, involved an alleged conflict between two statutory provisions appearing in different codes, the Business and Professions Code and the

6.100 of the San Francisco Charter provides an independent basis for granting City's petition.

⁷ We also note article I, section 3, subdivision (b), which was added to the Constitution by Proposition 59, a 2004 ballot measure (see *Alvarez v. Superior Court* (2007) 154 Cal.App.4th 642, 656), specifies it "does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records . . . that is in effect on the effective date of this subdivision . . ." (Cal. Const., art. I, § 3, subd. (b)(5)), such as the preexisting statutory exemption for privileged materials (see Evid. Code, § 954; Gov. Code § 6254, subd. (k); *Roberts*, *supra*, 5 Cal.4th at pp. 370–371).

Health and Safety Code. In that context, a court should “adopt, if possible, a construction which avoids apparent conflicts between different statutory provisions . . .” (*People v. Kennedy*, at p. 297.) That principle does not establish a court must construe a city charter to conform to a municipal ordinance. To the contrary, when a city enacts an ordinance or takes other action, it cannot contravene its charter. (See *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171 [charter city may not act in conflict with its charter; “Any act that is violative of or not in compliance with the charter is void.”]; see also *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1050–1051, 1058–1060 [application of provision of San Francisco Sunshine Ordinance contravened state statute].) In any event, as noted above, construing the charter’s provisions more narrowly would not change our analysis. The charter unambiguously creates an attorney-client relationship between the city attorney and the commission, and the state law attorney-client privilege is a fundamental aspect of that relationship.

Grossman next claims there is no conflict between the charter’s establishment of an attorney-client relationship and the ordinance’s purported elimination of the privilege for certain attorney-client communications, because “attorney-client communications are not necessarily confidential,” especially for public sector attorneys. Grossman notes that (as we have discussed above) the Brown Act requires that most meetings of local governing bodies be public and limits the attorney-client privilege in that context (see § 54956.9). But, as we have also explained above (and as Grossman does not appear to dispute), the Brown Act does not limit the privilege as to *written* communications between public sector attorneys and their clients, such as the materials at issue here. Written attorney-client communications remain privileged and exempt from disclosure pursuant to the CPRA. (Evid. Code, § 954; Gov. Code § 6254, subd. (k); *Roberts, supra*, 5 Cal.4th at pp. 377, 381.)

Grossman argues the Brown Act’s provisions nevertheless support a conclusion that, at least in the public sector, confidentiality is not fundamental to the provision of legal advice. Not so. California law recognizes that “public entities need confidential legal advice to the same extent as do private clients.” (*Roberts, supra*, 5 Cal.4th at

p. 374.) Our determination that the charter incorporates the state law attorney-client privilege and its protection of written attorney-client communications is thus consistent with the “balance between the competing interests in open government and effective administration [that] has been struck for local governing bodies in the [CPRA] and the Brown Act.” (*Roberts*, at p. 381.)

2. The Charter Supersedes the Contrary Ordinance Provision

Because the charter incorporates the attorney-client privilege, an ordinance cannot eliminate the privilege for a class of communications between the city attorney and his or her clients. “‘[A]n ordinance must conform to, be subordinate to, not conflict with, and not exceed the [city’s] charter, and can no more change or limit the effect of the charter than a legislative act can modify or supersede a provision of the constitution of the state.’” (*Currier v. Roseville* (1970) 4 Cal.App.3d 997, 1001.) To the extent San Francisco Administrative Code section 67.24, subdivision (b)(1)(iii) purports to compel disclosure of materials that fall within the scope of the attorney-client privilege, such as the written communications between the Ethics Commission and the city attorney at issue here, it conflicts with the charter’s protection of such materials. The trial court therefore erred in ordering disclosure of the documents pursuant to the ordinance.⁸

Seeking to avoid this result, Grossman argues that, because San Francisco Administrative Code section 67.24, subdivision (b)(1)(iii) purports to require disclosure of the materials at issue, they were “never confidential in the first place, and no privilege ever attached.” He alternatively contends that, if the privilege did apply, the voters could “waive” it by enacting the ordinance. We reject both arguments. Because the charter incorporates the privilege, an ordinance (whether enacted by City’s board of supervisors or by the voters) cannot eliminate it, either by designating as not confidential a class of materials that otherwise would be protected by the privilege, or by waiving the privilege

⁸ Because we conclude the charter supersedes the disputed ordinance provision, we do not address City’s argument that the ordinance provision is “invalid for [the] independent reason” that it would “impermissibly interfere” with the city attorney’s performance of his or her duties.

as to that category of documents; only a charter amendment can achieve that result. (See *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 102, 104–105 [initiative ordinance cannot limit effect of charter; electorate has no greater power to legislate by ordinance than City’s board of supervisors possesses].)

Grossman also cites a provision of the CPRA, section 6253, subdivision (e), that permits localities to provide greater access to records than the CPRA itself requires. Section 6253, subdivision (e) states: “Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in [the CPRA].” But section 6253, subdivision (e) does not purport to authorize a locality to enact an ordinance about records access that conflicts with the locality’s governing city charter. To change local law in this circumstance, a charter amendment is necessary. (See *City and County of San Francisco v. Patterson*, *supra*, 202 Cal.App.3d at pp. 102, 104–105.)

Finally, Grossman appears to suggest the privilege should protect the disputed materials from disclosure only if the commission demonstrates disclosure of those particular documents would impede the city attorney’s representation of the commission. We disagree. As noted, when the privilege applies, as it does here under the charter, it “ ‘is absolute and disclosure may not be ordered, without regard to relevance, necessity or any particular circumstances peculiar to the case.’ ” (*Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th at p. 732.)

C. The Alleged Procedural Impropriety of the Petition

The CPRA provides that, if a trial court orders a “public official” to disclose records, a “party” to the trial court proceeding may seek appellate review by filing a writ petition. (§ 6259, subds. (a)–(c).) Grossman directed his underlying records request solely to St. Croix, but then named both St. Croix and the Ethics Commission as parties in his petition for a writ of mandate in the trial court. As a result, both St. Croix and the commission are parties to the petition in this court. Grossman now argues the instant petition is “void,” because the commission did not meet publicly to authorize its filing.

We disagree. The general provisions of the Brown Act cited by Grossman (§§ 54952.6, 54954.2, subd. (a), 54956.9) do not establish a meeting by the members of an affected local commission or other body is a prerequisite to the exercise of the appellate remedy expressly specified in the CPRA.

D. The Parties' Requests for Judicial Notice

As noted, the trial court took judicial notice of Section 67.24 of the San Francisco Administrative Code and section 6.102 of the San Francisco Charter; we have taken judicial notice of sections 6.100 and 15.100 through 15.102 of the San Francisco Charter. We deny the parties' requests for judicial notice of other ordinance provisions, other charter provisions, and other items, because those materials are not relevant to our disposition of this matter. Accordingly, (1) City's November 22, 2013 request for judicial notice is granted as to exhibit B (S.F. Charter § 6.100) and exhibit F (S.F. Charter §§ 15.100–15.102) and is otherwise denied; (2) Grossman's December 23, 2013 request for judicial notice is granted as to (a) the portion of exhibit 1 that includes section 67.24 of the San Francisco Administrative Code and (b) the portion of exhibit 2 that includes sections 6.100, 6.102, and 15.100 through 15.102 of the San Francisco Charter, and is otherwise denied; (3) City's January 14, 2014 request for judicial notice is denied; (4) Grossman's March 7, 2014 request for judicial notice is granted as to (a) the portion of exhibit 1 that includes section 67.24 of the San Francisco Administrative Code and (b) the portion of exhibit 2 that includes sections 6.100, 6.102, and 15.100 through 15.102 of the San Francisco Charter, and is otherwise denied; and (5) City's April 1, 2014 request for judicial notice is denied.

III. DISPOSITION

The petition for a writ of mandate is granted. Let a peremptory writ of mandate issue directing respondent court to vacate the order granting Grossman's petition for a writ of mandate, and to enter a new order denying Grossman's petition. Upon finality of this decision, the temporary stay order is vacated. Costs in this original proceeding are awarded to St. Croix and the Ethics Commission.

Becton, J.*

We concur:

Dondero, Acting P.J.

Banke, J.

* Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

St. Croix v. Superior Court, A140308

Trial Court: San Francisco County Superior Court

Trial Judge: Hon. Ernest H. Goldsmith

Counsel:

City and County of San Francisco Office of the City Attorney, Dennis J. Herrera, City Attorney, Therese M. Stewart, Chief Deputy City Attorney, Vince Chhabria, Chief of Appellate Litigation, Andrew N. Shen and Joshua S. White, Deputy City Attorneys for Petitioners.

No appearance for Respondent.

Kerr & Wagstaffe LLP, Michael Kai Ng and Jasmine K. Singh for Real Party in Interest.

Court of Appeal, First Appellate District, Division One - No. A140308

S221082

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JOHN ST. CROIX, as Executive Director, etc. et al., Petitioners,

v.

SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent;

ALLEN GROSSMAN, Real Party in Interest.

The petition for review is denied.

SUPREME COURT
FILED

NOV 12 2014

Frank A. McGuire Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

BOARD of SUPERVISORS



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Andrea
Rosa

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TDD/TTY No. 544-5227

MEMORANDUM

Date: January 22, 2014
To: Victor Young
Clerk, Sunshine Ordinance Task Force
From: *AC* Angela Calvillo, Clerk of the Board
Subject: SOTF Referral – Complaint No. 12056

On November 22, 2013, the Board of Supervisors (Board) received a referral for enforcement from the SOTF, for Complaint No. 12056 (Mr. Allen Grossman against John St. Croix, Director of the Ethics Commission). The Board was informed of the process that upon receipt of the referral, the Board would have 60 days to request a hearing to consider the violation and possible enforcement on the matter.

The deadline to request a hearing was January 21 at 5:00pm. Given that no requests for a hearing were introduced by a Member of the Board, no further action is expected and the matter is considered closed.

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 1

Office of the County Clerk
San Francisco County Superior Court - Main
Attention: Civil Appeals
400 McAllister Street, 1st Floor
San Francisco, CA 94102

FILED
San Francisco County Superior Court

DEC 05 2014

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

JOHN ST. CROIX et al.,
Petitioners,

v.

SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,

Respondent;

ALLEN GROSSMAN,

Real Party in Interest.

A140308

San Francisco County No. CPF13513221

** REMITTITUR **

I, Diana Herbert, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on July 28, 2014 and that this opinion has now become final.

☒ Petitioner ☐ Respondent to recover costs
☐ Each party to bear own costs
☐ Costs are not awarded in this proceeding
☐ See decision for costs determination

Witness my hand and the Seal of the Court affixed at my office this DEC 03 2014

Very truly yours,

Diana Herbert

Clerk of the Court

[Signature]
Laura Fredenicks
Deputy Clerk

P.O. Report: ☐

Marsden Transcript: ☐

Boxed Transcripts: ☐

Exhibits: ☒

None of the above: ☐

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION REGULATIONS FOR HANDLING VIOLATIONS OF THE SUNSHINE ORDINANCE

Effective Date: January 25, 2013
Includes amendments effective November 22, 2013

TABLE OF CONTENTS

CHAPTER ONE

I.	Preamble.....	2
II.	Definitions.....	2

CHAPTER TWO

I.	Referrals to the Ethics Commission	5
II.	Show Cause Hearing	5

CHAPTER THREE

I.	Complaints Alleging Willful Violations of the Sunshine Ordinance by Elected Officials or Department Heads or Complaints Filed Directly with the Ethics Commission Alleging Violations of the Sunshine Ordinance.....	8
II.	Investigation and Recommendation	9
III.	Public Hearing	10

CHAPTER FOUR

I.	Miscellaneous Provisions	13
II.	Severability	15

CHAPTER ONE

I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code section 54950, et seq.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.

J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).

O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

CHAPTER TWO

I. REFERRALS TO THE ETHICS COMMISSION

A. Matters to be heard in a Show Cause Hearing.

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:

- a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or
- b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.

2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

B. Scheduling of Show Cause Hearing.

1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

II. SHOW CAUSE HEARING

A. Public Hearing. The Show Cause Hearing shall be open to the public.

B. Standard of Proof. The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

C. Hearing Procedures.

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; each Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

D. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

E. Ethics Commission Orders.

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or

b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or

c. The Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

F. Public Announcement.

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

CHAPTER THREE

I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR DEPARTMENT HEADS OR COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.

A. Matters heard under this Chapter.

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.
2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.
3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.
4. This Chapter will govern:
 - a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and
 - b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.
5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

B. Scheduling of Hearing.

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

II. INVESTIGATION AND RECOMMENDATION

A. Factual Investigation.

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

B. Subpoenas.

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

C. Report and Recommendation.

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

- a. that Respondent(s) willfully violated the Sunshine Ordinance;

b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or

c. that Respondent(s) did not violate the Sunshine Ordinance.

D. Response to the Report and Recommendation.

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

III. PUBLIC HEARING

A. General Rules and Procedures.

1. The hearing shall be open to the public.

2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.

5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

B. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.
3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

C. Ethics Commission Orders.

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:
 - a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
 - b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
 - c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

CHAPTER FOUR

I. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

C. Oaths and Affirmations.

The Commission may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

E. Extensions of Time and Continuances.

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

F. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.

3. Delivery is effective upon the date of delivery, not the date of receipt.

4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

G. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

H. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

II. SEVERABILITY

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

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CHAPTER 67:

THE SAN FRANCISCO SUNSHINE ORDINANCE OF 1999

Article

- I. IN GENERAL**
- II. PUBLIC ACCESS TO MEETINGS**
- III. PUBLIC INFORMATION AND PUBLIC RECORDS**
- IV. POLICY IMPLEMENTATION**

ARTICLE I: IN GENERAL

Sec. 67.1. Findings and Purpose.

Sec. 67.2. Citation.

SEC. 67.1. FINDINGS AND PURPOSE.

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to

information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority...

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.2. CITATION.

This Chapter may be cited as the San Francisco Sunshine Ordinance.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

ARTICLE II: PUBLIC ACCESS TO MEETINGS

- Sec. 67.3. Definitions.
 - Sec. 67.4. Passive Meetings.
 - Sec. 67.5. Meetings To Be Open and Public; Application of Brown Act.
 - Sec. 67.6. Conduct of Business; Time and Place For Meetings.
 - Sec. 67.7. Agenda Requirements; Regular Meetings.
 - Sec. 67.7-1. Public Notice Requirements.
 - Sec. 67.8. Agenda Disclosures: Closed Sessions.
 - Sec. 67.8-1. Additional Requirements for Closed Sessions.
 - Sec. 67.9. Agendas and Related Materials: Public Records.
 - Sec. 67.10. Closed Sessions: Permitted Topics.
 - Sec. 67.11. Statement of Reasons For Closed Sessions.
 - Sec. 67.12. Disclosure of Closed Session Discussions and Actions.
 - Sec. 67.13. Barriers to Attendance Prohibited.
 - Sec. 67.14. Video and Audio Recording, Filming and Still Photography.
 - Sec. 67.15. Public Testimony.
 - Sec. 67.16. Minutes.
 - Sec. 67.17. Public Comment By Members of Policy Bodies.
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SEC. 67.3. DEFINITIONS.

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

(a) "City" shall mean the City and County of San Francisco.

(b) "Meeting" shall mean any of the following:

(1) A congregation of a majority of the members of a policy body at the same time and place;

(2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or

(3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

(4) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(C-1)* The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

(2) Any group that meets to discuss with or advise the Mayor or any Department Head on

fiscal, economic, or policy issues;

(3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.

(4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating City policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

(1) The Board of Supervisors;

(2) Any other board or commission enumerated in the Charter;

(3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;

(4) Any advisory board, commission, committee or body, created by the initiative of a policy body;

(5) Any standing committee of a policy body irrespective of its composition.

(6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.

(7) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

Editor's note

**The drafters of Proposition G (November 2, 1999) inadvertently omitted section 67.3(b)(4)(C-1), formerly section 67.3(b)(4)(D), from the text of the ordinance submitted to the voters.*

SEC. 67.4. PASSIVE MEETINGS.

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

(b) To the extent not inconsistent with State or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in Subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.6. CONDUCT OF BUSINESS; TIME AND PLACE FOR MEETINGS.

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in Section 67.7(c), and mailed notice if sufficient time permits.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding Subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER
THE SUNSHINE ORDINANCE
(Chapter 67 of the
San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION
ON YOUR RIGHTS UNDER THE SUNSHINE
ORDINANCE OR TO REPORT A VIOLATION
OF THE ORDINANCE, CONTACT THE
SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

SEC. 67.7-1. PUBLIC NOTICE REQUIREMENTS.

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

(Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

SEC. 67.8. AGENDA DISCLOSURES: CLOSED SESSIONS.

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

(1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

_____ applicant(s)
The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

**CONFERENCE WITH REAL PROPERTY
NEGOTIATOR**

Property:

Person(s) negotiating:

Under negotiation:

Price: _____ Terms of payment: _____ Both: _____

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

_____ Unspecified to protect service of process

_____ Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation: _____ As defendant _____ As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE

EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR

COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

_____ Police officers, firefighters and airport police
_____ Transit Workers
_____ Nurses
_____ Miscellaneous Employees

Anticipated issue(s) under negotiation:

_____ Wages
_____ Hours
_____ Benefits
_____ Working Conditions
_____ Other (specify if known)
_____ All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.8-1. ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS.

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least TEN years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation

is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

(b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed.

(Added by Proposition G, 11/2/99)

SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.10. CLOSED SESSIONS: PERMITTED TOPICS.

A policy body may, but is not required to, hold closed sessions:

(a) With the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

(b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to

hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.

(c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual's performance.

(d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,

(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.

(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.

(e) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters.

(1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.

(2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

SEC. 67.11. STATEMENT OF REASONS FOR CLOSED SESSIONS.

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this Article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this Article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this Article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.12. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Real Property Negotiations: Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in Subdivision (b) of this Section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) Litigation: Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which

would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this Section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the City's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by Subdivision (b) of this Section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

(d) A written summary of the information required to be immediately reported pursuant to this Section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.13. BARRIERS TO ATTENDANCE PROHIBITED.

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or

passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

SEC. 67.14. VIDEO AND AUDIO RECORDING, FILMING AND STILL PHOTOGRAPHY.

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the Charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.

(c) Every City policy body, agency or department shall audio or video every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99; Ord. 80-08, File No. 071596)

SEC. 67.15. PUBLIC TESTIMONY.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to Subdivision (c) of this Section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.16. MINUTES.

The clerk or secretary of each board and commission enumerated in the Charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this Section shall be made available in Braille or increased type size.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of State or Federal law or of this ordinance. The release of specific factual information made confidential by State or Federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

ARTICLE III: PUBLIC INFORMATION AND PUBLIC RECORDS

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|---------------|-----------------------------------------------------------------------|
| Sec. 67.20. | Definitions. |
| Sec. 67.21. | Process for Gaining Access to Public Records; Administrative Appeals. |
| Sec. 67.21-1. | Policy Regarding Use and Purchase of Computer Systems. |
| Sec. 67.22. | Release of Oral Public Information. |
| Sec. 67.23. | Public Review File – Policy Body Communications. |
| Sec. 67.24. | Public Information that Must Be Disclosed. |

Sec. 67.25.	Immediacy of Response.
Sec. 67.26.	Withholding Kept to a Minimum.
Sec. 67.27.	Justification of Withholding.
Sec. 67.28.	Fees for Duplication.
Sec. 67.29.	Index to Records.
Sec. 67.29-1.	Records Survive Transition of Officials.
Sec. 67.29-2.	Internet Access/World Wide Web Minimum Standards.
Sec. 67.29-3.	
Sec. 67.29-4.	Lobbyist On Behalf of the City.
Sec. 67.29-5.	Calendars of Certain Officials.
Sec. 67.29-6.	Sources of Outside Funding.
Sec. 67.29-7.	Correspondence and Records Shall Be Maintained.

SEC. 67.20. DEFINITIONS.

Whenever in this article the following words or phrases are used, they shall mean:

(a) "Department" shall mean a department of the City and County of San Francisco.

(b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

(c) "Supervisor of Records" shall mean the City Attorney.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and

nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the *superior court* shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought

before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(1) Implementing a computer system in which exempt information is segregated or filed

separately from otherwise disclosable information.

(2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

(3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.23. PUBLIC REVIEW FILE – POLICY BODY COMMUNICATIONS.

(a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) **Personnel Information.** None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

- (i) Sex, age and ethnic group;
- (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- (iii) Years of employment in the private and/or public sector;
- (iv) Whether currently employed in the same position for another public agency.
- (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

- (3) The job description of every employment classification.
- (4) The exact gross salary and City-paid benefits available to every employee.
- (5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) **Law Enforcement Information.**

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable State law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This Subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals.

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this Subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives

compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or City representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) **Budgets and Other Financial Information.** Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.28. FEES FOR DUPLICATION.

(a) No fee shall be charged for making public records available for review.

(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to Subdivision (d) of this Section, a fee not to exceed one cent per page may be charged, plus any postage costs.

(c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to Subdivision (d) of this Section, a fee not to exceed 10 cents per page may be charged, plus any postage.

(d) A department may establish and charge a higher fee than the one cent presumptive fee in Subdivision (b) and the 10 cent presumptive fee in Subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.

(e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.29. INDEX TO RECORDS.

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and

shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

SEC. 67.29-1. RECORDS SURVIVE TRANSITION OF OFFICIALS.

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco.

(Added by Proposition G, 11/2/99)

SEC. 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness

and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes.

(Added by Proposition G, 11/2/99)

SEC. 67.29-3.

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record.

(Added by Proposition G, 11/2/99)

SEC. 67.29-4. LOBBYIST ON BEHALF OF THE CITY.

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, State, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, State, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this Ordinance.

(b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least \$300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under Section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, State, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on matters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

(Added by Proposition G, 11/2/99)

SEC. 67.29-5. CALENDARS OF CERTAIN OFFICIALS.

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no City business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the City. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date.

(Added by Proposition G, 11/2/99)

SEC. 67.29-6. SOURCES OF OUTSIDE FUNDING.

No official or employee or agent of the City shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City.

(Added by Proposition G, 11/2/99)

SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

(b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.

(c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program.

(Added by Proposition G, 11/2/99)

ARTICLE IV: POLICY IMPLEMENTATION

- Sec. 67.30. The Sunshine Ordinance Task Force.
- Sec. 67.31. Responsibility for Administration.
- Sec. 67.32. Provision of Services to Other Agencies; Sunshine Required.
- Sec. 67.33. Department Head Declaration.
- Sec. 67.34. Willful Failure Shall be Official Misconduct.
- Sec. 67.35. Enforcement Provisions.
- Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.
- Sec. 67.37. Severability.

SEC. 67.30. THE SUNSHINE ORDINANCE TASK FORCE.

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City

departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

SEC. 67.31. RESPONSIBILITY FOR ADMINISTRATION.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this Chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

SEC. 67.32. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE REQUIRED.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records.

To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The City shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the City with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed.

(Added by Proposition G, 11/2/99)

SEC. 67.33. DEPARTMENT HEAD DECLARATION.

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force.

(Added by Proposition G, 11/2/99)

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

(Added by Proposition G, 11/2/99)

SEC. 67.35. ENFORCEMENT PROVISIONS.

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed.

(Added by Proposition G, 11/2/99)

SEC. 67.36. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

(Added by Proposition G, 11/2/99)

SEC. 67.37. SEVERABILITY.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Argumedo, Catherine (ETH)

From: Argumedo, Catherine (ETH)
Sent: Monday, January 12, 2015 4:28 PM
To: 'Allen GROSSMAN'; St.Croix, John
Cc: Mainardi, Jesse (ETH)
Subject: Reminder: Ethics Commission SHOW CAUSE HEARING on January 26, 2015 at 5:30 PM
re: Ethics Complaint No. 01-140107
Attachments: Notice.Show.Cause.Hearing.0114.pdf; Show.Cause.Docs.0114.pdf

Ethics Complaint No. 01-140107 is scheduled for a show cause hearing during the Ethics Commission's next regular meeting on Monday, January 26, 2015 at 5:30 PM in Room 400 at City Hall.

Each party may submit documents to the Commission to support his position, pursuant to Chapter II, Section II.C.2 of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing, or Friday, **January 16, 2015**. A copy of the Regulations may be found at the following address:
<http://www.sfethics.org/files/EC.Sunshine.Regulations.effective.Nov.2013.pdf>

Please note that Monday, January 19, 2015 is a holiday and the Ethics Commission will be closed.

Regards,

Catherine Argumedo
Ethics Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053
415-252-3100 (t)
415-252-3112 (f)
www.sfethics.org

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Argumedo, Catherine (ETH)

From: Argumedo, Catherine (EiH)
Sent: Friday, December 12, 2014 11:16 AM
To: 'Allen GROSSMAN'; St.Croix, John
Cc: Mainardi, Jesse (ETH)
Subject: Notice of Ethics Commission SHOW CAUSE HEARING on January 26, 2015 at 5:30 PM
re: Ethics Complaint No. 01-140107
Attachments: Notice.Show.Cause.Hearing.0114.pdf; Show.Cause.Docs.0114.pdf

On November 21, 2013, the Ethics Commission received a referral from the Sunshine Ordinance Task Force regarding a complaint by Allen Grossman against John St. Croix, Executive Director of the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance. This matter, Ethics Complaint No. 01-140107 (Sunshine complaint number 12056), has been scheduled for a show cause hearing during the Ethics Commission's next regular meeting on **Monday, January 26, 2015 at 5:30 PM in Room 400 at City Hall**.

The hearing notice and documents relating to this matter are attached to this e-mail. A hard copy of all documents will be provided upon request.

Each party may submit any documents to the Commission to support his position, pursuant to Chapter II, Section II.C.2 of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance. Any documents so provided shall be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing, or Monday, January 16, 2015. A copy of the Regulations may be found at the following address: <http://www.sfethics.org/files/EC.Sunshine.Regulations.effective.Nov.2013.pdf>

Please let me know if you are unable to open the attachments.

Regards,

Catherine Argumedo
Ethics Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053
415-252-3100 (t)
415-252-3112 (f)
www.sfethics.org

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المقدمة

الحمد لله الذي هدانا لهذا الذي كنا لنهتدي لولا أن هدانا الله. هذه الدراسة هي محاولة modestة لفهم بعض الجوانب من التاريخ والفكر العربي في القرن العشرين. نأمل أن تكون هذه الدراسة مفيدة للقارئ.

في هذا القسم نناقش بعض القضايا الأساسية التي تواجه الفكر العربي في القرن العشرين. نبدأ بمناقشة الوضع الاجتماعي والاقتصادي في العالم العربي في ذلك الوقت، ثم ننتقل إلى مناقشة التطورات الفكرية والسياسية.

في هذا القسم نناقش بعض القضايا الأساسية التي تواجه الفكر العربي في القرن العشرين. نبدأ بمناقشة الوضع الاجتماعي والاقتصادي في العالم العربي في ذلك الوقت، ثم ننتقل إلى مناقشة التطورات الفكرية والسياسية.

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ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER


BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: December 12, 2014

To: Allen Grossman, Complainant
John St. Croix, Executive Director, Ethics Commission, Respondent

From:  Jesse Mainardi, Deputy Executive Director

Re: **NOTICE of SHOW CAUSE HEARING re: Ethics Complaint No. 01-140107 on Monday, January 26, 2015 at 5:30 PM**

This Notice of Show Cause Hearing concerns a referral letter and an Order of Determination ("Order") delivered by the Sunshine Ordinance Task Force ("Task Force") to the Ethics Commission on November 21, 2013 regarding a complaint Allen Grossman filed against John St. Croix, Executive Director of the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Mr. St. Croix as the Respondent. This matter was previously continued pending the resolution of litigation, as set forth below.

Background

According to the Order, Allen Grossman filed a complaint with the Task Force on November 19, 2012 against the Respondent and alleged that the Respondent failed to fully respond to his public records request dated October 3, 2012. The Complainant alleged violations of the public records laws, specifically including Sunshine Ordinance sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii). The Task Force heard the matter on June 5, 2013 and found Sunshine Ordinance sections 67.21(b) and 67.24(b)(1) to be applicable to this case. The Task Force found that the requested records "are disclosable" and that Respondent violated section 67.21(b) for failure to provide the records within ten days following receipt of a request and section 67.24(b)(1) for withholding records subject to disclosure.

The Order was issued on June 24, 2013 and Respondent was ordered to release the records and appear before the Compliance and Amendments Committee on August 20, 2103. The Compliance and Amendments Committee heard the matter on August 20, 2013 and referred the matter back to the Task Force.

On September 4, 2013, the Task Force heard the matter again. According to the referral letter, the Task Force moved to find Respondent in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics Commission for violating sections 67.21(b), 67.27(a)(b) and 67.24(b)(1)(i)&(iii). On

January 27, 2014, the Board of Supervisors notified the Ethics Commission that it had closed this matter after taking no action.

On January 8, 2014, Respondent requested a continuance as the referral alleged violations of the Sunshine Ordinance that were also before the Court of Appeal of the State of California, First Appellate District (appeal from the Superior Court of California, Case # CPF-13-513221), in litigation originally initiated by the Complainant. Chairperson Hayon granted the request for a continuance on January 10, 2014. The Court of Appeal issued its decision in the matter on July 28, 2014 in favor of the Respondent, and the Supreme Court of California denied Complainant's Petition for Review on November 12, 2014. Due to notice requirements and the cancellation of the Ethics Commission's regular meeting in December 2014, the January 2015 regular meeting of the Ethics Commission is the first opportunity following the Supreme Court's denial to schedule this hearing.

Hearing Procedures & Scheduling

This matter will be heard under **Chapter Two** of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). This matter is scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, January 26, 2015**, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (See Regulations, Chapter Two, § II.B.) The Commission shall deliberate on this matter in public and public comment will be allowed at the hearing. (See Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. (See Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission has not granted the party a continuance or rescheduled the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, January 9, 2015.

The Respondent and the Complainant may speak on his or her own behalf at the hearing, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding

supporting documents. Any such submission and supporting documents shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing, or no later than Monday, January 16, 2015.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum; a copy of the Regulations is also attached.

1. The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt$$

It is well known that this function is the arctangent function, i.e., $f(x) = \arctan x$.

The second part of the paper is devoted to the study of the properties of the function $g(x)$ defined by the equation

$$g(x) = \int_0^x \frac{t}{1+t^2} dt$$

It is well known that this function is the logarithm of the square of the square root of $1+x^2$, i.e., $g(x) = \frac{1}{2} \ln(1+x^2)$.

The third part of the paper is devoted to the study of the properties of the function $h(x)$ defined by the equation

$$h(x) = \int_0^x \frac{t^2}{1+t^2} dt$$

It is well known that this function is the difference between the logarithm of the square of the square root of $1+x^2$ and the arctangent function, i.e., $h(x) = \frac{1}{2} \ln(1+x^2) - \arctan x$.

The fourth part of the paper is devoted to the study of the properties of the function $k(x)$ defined by the equation

$$k(x) = \int_0^x \frac{t^3}{1+t^2} dt$$

It is well known that this function is the difference between the logarithm of the square of the square root of $1+x^2$ and the arctangent function, i.e., $k(x) = \frac{1}{2} \ln(1+x^2) - \arctan x$.

The fifth part of the paper is devoted to the study of the properties of the function $l(x)$ defined by the equation

$$l(x) = \int_0^x \frac{t^4}{1+t^2} dt$$

It is well known that this function is the difference between the logarithm of the square of the square root of $1+x^2$ and the arctangent function, i.e., $l(x) = \frac{1}{2} \ln(1+x^2) - \arctan x$.

The sixth part of the paper is devoted to the study of the properties of the function $m(x)$ defined by the equation

$$m(x) = \int_0^x \frac{t^5}{1+t^2} dt$$

It is well known that this function is the difference between the logarithm of the square of the square root of $1+x^2$ and the arctangent function, i.e., $m(x) = \frac{1}{2} \ln(1+x^2) - \arctan x$.

The seventh part of the paper is devoted to the study of the properties of the function $n(x)$ defined by the equation

$$n(x) = \int_0^x \frac{t^6}{1+t^2} dt$$

It is well known that this function is the difference between the logarithm of the square of the square root of $1+x^2$ and the arctangent function, i.e., $n(x) = \frac{1}{2} \ln(1+x^2) - \arctan x$.

The eighth part of the paper is devoted to the study of the properties of the function $o(x)$ defined by the equation

$$o(x) = \int_0^x \frac{t^7}{1+t^2} dt$$



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Via Hand Delivery

January 10, 2014

John St. Croix, Executive Director
Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Request for Continuance (Ethics Complaint No. 01-140107)

Director St. Croix:

As Chairperson of the Ethics Commission, I hereby grant your request for a continuance of this matter. This matter will be continued until the conclusion of court proceedings regarding the appeal of Superior Court of San Francisco Case No. CPF-13-513221, which is currently before the Court of Appeal of the State of California, First Appellate District.

Sincerely,

A handwritten signature in cursive script, appearing to read "Beverly Hayon", is written over a horizontal line.

Beverly Hayon
Chairperson

Cc (e-mail): Allen Grossman, Complainant

FILED
2014 JAN 10 AM 10:05
SAN FRANCISCO
ETHICS COMMISSION

Chatfield, Garrett (ETH)

From: St. Croix, John
Sent: Wednesday, January 08, 2014 4:48 PM
To: Chatfield, Garrett
Cc: grossman356@mac.com
Subject: FW: Continuance Request

FYI

Dear Chairperson Hayon -

On November 21, 2013, the Ethics Commission received a Sunshine Ordinance Task Force referral (Ethics Complaint No. 01-140107) naming me, John St. Croix, as Respondent. The referral alleged violations of the Sunshine Ordinance that are currently being litigated in the Court of Appeal of the State of California, First Appellate District, appeal from the Superior Court of California, Case # CPF-1 3-513221.

Under the Regulations for Handling Violations of the Sunshine Ordinance, Task Force referrals must be calendared for a hearing before the Commission at the next Regular Commission meeting. (See Regulations, Ch. Two, § I.B.) As there was no Commission meeting in December 2013, the Regular Commission meeting of January 27, 2014, is the first opportunity to schedule the hearing.

As the allegations in the Sunshine Task Force referral are identical to those currently being litigated, I respectfully request that the Commission continue the hearing on the matter until after the litigation is resolved by the Court. (See Regulations, Ch. Four, § I.E.) The outcome of the litigation will not interfere with your ability to hear the matter at a future hearing. (See SF Admin. Code, § 67.21(f).) However, the resolution of the litigation may better inform the Commission in making its determination regarding the matter.

A copy of this request will be forwarded to the complainant, Alan Grossman

John St. Croix
Executive Director
San Francisco Ethics Commission

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

November 21, 2013

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

BY
Re: Compliance and Amendments Committee recommendation for referral to the Ethics Commission in the case of Allen Grossman against John St. Croix, for failure to provide disclosable records. (Sunshine Ordinance Complaint No. 12056, Allen Grossman vs. John St. Croix, Ethics Commission)

Dear Ethics Commission,

On June 5, 2013, the Task Force heard Complaint No. 12056, by Allen Grossman ("Complainant") against John St. Croix, Executive Director of the Ethics Commission ("Respondent"). The Complainant alleged that Respondent violated public records laws in his role as Executive Director by not fully responding to his public records request dated October 3, 2012.

Complainant Allen Grossman appeared before the Task Force and presented his claim. Respondent, John St. Croix, Executive Director, Ethics Commission, presented the Ethics Commission's defense. The issue in the case was whether the Respondent violated Sections 67.21, 67.24, and 67.27 of the Ordinance and/or Sections 6253 and 6254 of the California Public Records Act. Mr. Grossman alleges John St. Croix, Executive Director, Ethics Commission, failed to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under provisions of the Sunshine Ordinance.

Based on the testimony and evidence presented, the Task Force found the testimony of Mr. Grossman to be persuasive and finds Sections 67.21(b) and 67.24(b)(1) of the Ordinance to be applicable in this case. The Task Force found that the records requested from the Ethics Commission are disclosable public records and found that Respondent has violated Section 67.21(b) of the Sunshine Ordinance for failure to provide the records within ten days following receipt of a request and Section 67.24(b)(1) of the Sunshine Ordinance for withholding records subject to disclosure. An Order of Determination was issued on June 24, 2013 asking John St. Croix, Executive Director, Ethics Commission, to release the records requested within 5 business days of the issuance of the Order and to appear before the Compliance and Amendments Committee on August 20, 2013.

On August 20, 2013 the Compliance and Amendments Committee heard Allen Grossman (Complainant) provide an update on the June 24th order of determination from the June 4, 2013 full SOTF meeting. The Respondent (John St. Croix) provided an update that no additional records had been

provided and responded to questions. The committee moved to refer the matter back to the Task Force with a recommendation that it be forwarded to the Ethics Commission.

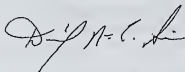
At the September 4, 2013 SOTF meeting the Task Force found John St. Croix in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics Commission for violating Sections 67.21(b), 67.27 (a)(b) and 67.24 (b)(1) (i)&(iii).

This request and referral is made under Section 67.30 (c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this Ordinance or the Acts.

Thank you for your timely attention to this matter. A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination. Please contact the Sunshine Ordinance Task Force Administrator at sotf@sfgov.org or (415) 554-7724 with any questions or concerns.



Kitt Grant, Chair
Sunshine Ordinance Task Force



David Sims, Member Attorney
Sunshine Ordinance Task Force

Encl.

cc: Allen Grossman, Complainant
John St. Croix, Respondent
Celia Lee, Deputy City Attorney
Jerry Threat, Deputy City Attorney



ORDER OF DETERMINATION

June 24, 2013

DATE THE DECISION ISSUED

June 5, 2013

ALLEN GROSSMAN VS. JOHN ST. CROIX, ETHICS COMMISSION (CASE NO. 12056)

FACTS OF THE CASE

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

COMPLAINT FILED

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

HEARING ON THE COMPLAINT

On June 5, 2013, Complainant Allen Grossman appeared before the Task Force and presented his claim. Respondent, John St. Croix, Executive Director, Ethics Commission, presented the Ethics Commission's defense.

The issue in the case is whether the Respondent violated Sections 67.21, 67.24, and 67.27 of the Ordinance and/or Sections 6253 and 6254 of the California Public Records Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds the testimony of Mr. Grossman to be persuasive and finds Sections 67.21(b) and 67.24(b)(1) of the Ordinance to be applicable in this case. The Task Force does not find the testimony provided by John St. Croix, Executive Director, Ethics Commission, persuasive to this case.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the records requested from the Ethics Commission are disclosable public records and finds that Respondent has violated Section 67.21(b) of the Sunshine Ordinance for failure to provide the records within ten days following receipt of a request and Section 67.24(b)(1) of the Sunshine Ordinance for withholding records subject to disclosure. John St. Croix, Executive Director, Ethics Commission, shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on August 20, 2013.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 5, 2013, by the following vote:

(Washburn/Knee) (Violation 67.21(b))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

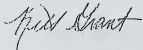
Absent: Grant

(Fischer/David) (Violation 67.24(b)(1))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

Absent: Grant



Kitt Grant, Chair

Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Allen Grossman, Complaint
John St. Croix, Executive Director Respondent



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

June 5, 2013 – 4:00 PM

Regular Meeting

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Seat 1	<i>(Vacant)</i>	Seat 8	Todd David
Seat 2	Richard Knee <i>(Hold Over)</i>	Seat 9	Chris Hyland
Seat 3	Kitt Grant – Chair	Seat 10	Louise Fischer – Vice Chair
Seat 4	<i>(Vacant)</i>	Seat 11	Bruce Oka
Seat 5	Allyson Washburn <i>(Hold Over)</i>		
Seat 6	David Pilpel	Ex-officio	Angela Calvillo
Seat 7	David Sims	Ex-officio	<i>(Vacant)</i>

2. File No. 12055: Complaint filed by Wood Robbins, LLP, representing Pacific Polk Properties, LLC against Dennis Herrera, City Attorney for allegedly not producing documents pertaining to the project at 1601 Larkin Street. *(attachment)*

- (a) Determination of jurisdiction on complaint filed by Wood Robbins, LLP, representing Pacific Polk Properties, LLC against Dennis Herrera, City Attorney for allegedly not producing documents pertaining to the project at 1601 Larkin Street. *(approximately 5 minutes) (Discussion and Action)*
- (b) Hearing on complaint filed by Wood Robbins, LLP, representing Pacific Polk Properties, LLC against Dennis Herrera, City Attorney for allegedly not producing documents pertaining to the project at 1601 Larkin Street. *(approximately 45 minutes) (Discussion and Action)*

3. File No. 12056: Complaint filed by Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. *(attachment)*

- (a) Determination of jurisdiction on complaint filed by Allen Grossman against John St. Croix, Executive Director, Ethics Commission for alleged failure to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. *(approximately 5 minutes) (Discussion and Action)*

- (b) Hearing on complaint filed by Allen Grossman against John St. Croix, Executive Director, Ethics Commission for alleged failure to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. *(approximately 45 minutes) (Discussion and Action)*
- 4. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. *(No Action) Public comment shall be taken at 5:00 pm or as soon thereafter as possible.*
- 5. **File No. 12059:** Complaint filed by Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(approximately 45 minutes) (Discussion and Action)*
- 6. **File No. 13005:** Complaint filed by Paula Datesh against Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Paula Datesh against Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Paula Datesh against Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(approximately 45 minutes) (Discussion and Action)*
- 7. **File No. 13011:** Complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(approximately 5 minutes) (Discussion and Action)*

- (b) Hearing on complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(approximately 45 minutes) (Discussion and Action)*
8. Motion (a) to communicate to the appropriate state government officials the Task Force's opposition to proposals in the State's draft budget for Fiscal Year 2013-2014 to (1) impose fees for access to court records and (2) halt State reimbursements to local governments for expenses incurred in complying with State public-records laws; and (b) to inform local news media of said communications. *(approximately 15 minutes) (Discussion and Action)*
9. **Approval of Minutes from the January 16, 2013 Special Meeting.** *(approximately 5 minutes) (Action) (attachment)*
10. **Approval of Minutes from the February 6, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
11. **Approval of Minutes from the March 6, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
12. **Approval of Minutes from the April 3, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
13. **Approval of Minutes from the May 1, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
14. **Report: Compliance and Amendments Committee meeting of April 16, 2013.** *(approximately 5 minutes) (Discussion)*
15. **Report: Education, Outreach and Training Committee meetings of April 29, 2013 and May 13, 2013.** *(approximately 5 minutes) (Discussion)*
16. **Administrator's Report.** *(approximately 5 minutes) (Discussion)*
17. **Announcements, Comments, Questions, and Future Agenda Items.** *(approximately 10 minutes) (Discussion and Action)*
18. **ADJOURNMENT**

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing;. These comments will be made a part of the official public record.

Hearing Procedures

- | | | |
|----|--------------------------------------------------------------------------------------------------------------|----------------------|
| 1. | Complainant presents his/her facts and evidence | 5 minutes |
| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. | City responds | 5 minutes |
| | Other parties of City respond | Up to 3 minutes each |
| | <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. | Matter is with the Task Force for discussion and questions. | |
| 4. | Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. | Matter is with the Task Force for motion and deliberation. | |
| 6. | Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

File No. 12056

SOTF Item No. 3

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF)

Date: June 5, 2013

Compliance and Amendments Committee (CAC)

Date: _____

CAC/SOTF

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memorandum
<input type="checkbox"/>	<input type="checkbox"/>	Order of Determination
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint and Supporting documents
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Respondent's Response
<input type="checkbox"/>	<input type="checkbox"/>	Minutes
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Completed by: Andrea Ausberry Date May 29, 2013

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 75 pages.
The complete document is in the file.

SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT

Date: November 19, 2012; amended December 18, 2012.

Complainant: Allen Grossman
111 30th Avenue
San Francisco, CA 94121
Facsimile: (415) 831-3721
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director
San Francisco Ethics Commission;
Mr. Steven Massey, Information Technology Officer San
Francisco Ethics Commission.

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Sections 67.21, subdivision (b), 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b) (1) (i) and (iii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the folk, ring Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012
Regular Meeting of the Ethics Commission

SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT

Date: November 19, 2012

Complainant: Allen Grossman
111 30th Avenue
San Francisco, CA 94121
Facsimile: (415) 831-3721
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director
San Francisco Ethics Commission;
Mr. Steven Massey, Information Technology Officer
San Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42; subdivision (b) (1) (i) and (ii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

"(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

October 12, 2012: Mr. Massey responded, on behalf of Mr. St. Croix, by email (Document #2) stating, in part:

"We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

"A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030." [Emphasis Added.]

October 21, 2012: Complainant sent the attached letter (Document #3) by Facsimile to Mr. Massey in which Complainant advised him that:

"There is no point in my considering whether any of these "confidentiality" protections -- the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) -- are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each one is and then determine whether or not I concur that one or two of those "protections" would apply.

"By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the

attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

"The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

"Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance."

November 1, 2012: Complainant sent the following email Mr. Massey (copy to Mr. St. Croix):

To: Steven.Massey@SFGOV.ORG
From: Allen Grossman <grossman356@mac.com>
Date: 11/01/2012 04:29PM
Cc: john.st.croix@sfgov.org
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it

appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

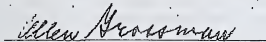
November 2, 2012 Mr. St. Croix responded by email (Document #4) as follows:

From: john.st.croix@sfgov.org
Subject: Re: October 3, 2012 Records Request
Date: November 2, 2012 3:04:50 PM PDT
To: Allen Grossman <grossman356@mac.com>
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. *You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed. [Emphasis Added]*

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Hearing: Complainant requests a public hearing before the Sunshine Ordinance Task Force.


Allen Grossman

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Email: grossman356@mac.com
Phone: (415) 831-3720
FAX: (415) 831-3721

VIA FACSIMILE

To: Mr. John St. Croix, Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Date: October 3, 2012

This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

- (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012
Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

- (2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.

In accordance with Section 67.25(d) of the Sunshine Ordinance, please provide the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling"

basis.

If the requested records are kept electronically or in PDF format, please send them in their original format by email to my above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to my above email address.

This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.

Allen Grossman
Allen Grossman

From: Steven.Massey@SFGOV.ORG
Subject: Response to records request - October 3, 2012
Date: October 12, 2012 2:57:40 PM PDT
To: Allen Grossman <grossman356@mac.com>

Mr. Grossman,

On October 3, 2012, Executive Director St. Croix received the following request from you:

"...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

You requested that the Ethics Commission send the records to your e-mail address.

We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.

Please let me know whether you would like the Commission to provide the disc or whether you will provide your own. The responsive documents to your request are available for inspection and copying.

Sincerely,

Steven Massey

#2

Information Technology Officer
CCSF Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(P) 415-252-3108
(F) 415-252-3112
Steven.Massey@sfgov.org
<http://www.sfethtics.org>

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Tel: (415) 831-3720
Fax: (415) 831-3721
Email: grossman356@mac.com

October 21, 2012

BY FACSIMILE

Mr. Steven Massey
Information Technology Officer
CCSF Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: October 3, 2012 Records Request

Déar Mr. Massey:

In your October 12, 2012 Email responding to the subject Records Request you advised me:

"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030."

My Records Request was directed to Mr. St. Croix, Executive Director of the Ethics Commission. Although the complete response - that is, the copies of public records you are making available to me (including those with redactions) as described in your email and notice that the decision to withhold public records from disclosure - came from you, I can properly assume that Mr. St. Croix approved the response and that he takes full responsibility for it. If otherwise, please advise me.

So that we are looking at the specific sections of the state statutes to which you refer as the basis for withholding "other documents", I quote them in full on the Schedule attached to this letter. CPRA §6254(k) is not an exemption by itself, but incorporates state and federal law exemptions. Evidence Code §§952 and 954 create the "attorney-client privilege" and CCP §2018.30 creates two so-called "work product" doctrines, one absolute and the other conditional. Mr. St. Croix relies on these two exemptions to justify his withholding of certain unidentified public records. However, in the case of the conditional work product doctrine - §2018.30(b) - it is not clear whether it is even applicable when no litigation is involved.

There is no point in my considering whether any of these "confidentiality" protections - the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) - are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each

#3

one is and then determine whether or not I concur that one or two of those "protections" would apply.

By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(i) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance.

§67.25 provides, in part:

"No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute."

§67.27 provides, in part:

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority. [Emphasis added.]

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere. {Emphasis Added.}

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

Taken together these provisions require Mr. St. Croix, as the custodian of the requested records, to review each of the withheld records, provide some description of each (without necessarily disclosing any public information in it that he considers exempt) and then cite the specific statutory exemption that he claims exempts it or the redacted information from disclosure.

Before I pursue my Records Request any further, Mr. St. Croix is reminded that he cannot summarily deny my constitutionally protected right to access public records and public information with broad claims of exemptions to a group of varying types of public records contrary to what the CPRA and the Sunshine Ordinance were designed to prevent.

Very Truly Yours,

AS/ AG
Allen Grossman

CPRA § 6254(k): Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following: (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Evidence Code §952: As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Evidence Code §954: Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

...The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

Code of Civil Procedure §2018.030:

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

MEMORANDUM

Date: May 28, 2013

To: Members, Sunshine Ordinance Task Force

Re: Complaint # 12056:
Grossman vs. John St. Croix, Executive Director, SF Ethics Commission

My complaint and Mr. St. Croix's response are to be heard at SOTF's June 5, 2013 regular meeting. Currently the SOTF has nine members, two short of the statutorily required eleven. Under the SOTF current bylaws, the "affirmative vote of a majority of the members of the Task Force (six votes) shall be required for the approval of all substantive matters."

Determinations by the SOTF whether a respondent custodian agency, department or City officer responding to a complaint has or has not complied with the Sunshine Ordinance are "substantive matters" requiring approval by six votes irrespective of the number of SOTF members voting.

Following a hearing on the complaint, the SOTF's practice has been to consider a motion with respect to the complaint's claims of respondent's non-compliance with the Sunshine Ordinance. That motion requires the "aye" vote of at least six members that the respondent had not complied. Thus, when less than all eleven members are present and voting, the complainant needs more than a simple majority for such a motion to pass. If all nine current members attend the June 5 meeting and vote on my complaint, a two-thirds majority – six out of nine votes – will be required for a favorable determination. If only eight members attend and vote, the percentage rises to 75%; if only seven attend and vote, it is 87.5%. As a result, this combination of the six-vote rule and the formulation of the motion stack the deck against every complainant.

However, this combination is contrary to both the Sunshine Ordinance and the CPRA. *The Sunshine Ordinance and the CPRA both definitively provide that all public records are presumptively fully disclosable and the burden is on the custodian to prove, i.e., justify, the application of a specific exemption.*

Sunshine Ordinance:

§67.21(g): "In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies."

§67.27 JUSTIFICATION OF WITHHOLDING:

"Any withholding of information shall be justified, in writing, as follows:

"(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

"(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

"(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position."

CPRA:

§6255(a): "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

Thus, the burden of proving, i.e., "justifying", the refusal to disclose the public record is on the respondent, not on the complainant to disprove any claimed "justification".

For that reason, the SOTF's practice with respect to motions involving such non-compliance with the Sunshine Ordinance should be changed. The motion must be, in effect, that the respondent has justified the application of the claimed exemption or prohibition to the public record(s) requested, not that the complainant has proven that the records are not exempt from disclosure. If the motion is put in such terms, the six-vote rule will be consistent with applicable law, not contrary to it. It will also bring some fairness back into the process.

From: John.st.croix@sfgov.org
Subject: Re: October 3, 2012 Records Request
Date: November 2, 2012 3:04:50 PM PDT
To: Allen Grossman <grossman356@mac.com>
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

-----Allen Grossman <grossman356@mac.com> wrote: -----
To: Steven.Massey@SFGOV.ORG
From: Allen Grossman <grossman356@mac.com>
Date: 11/01/2012 04:29PM
Cc: john.st.croix@sfgov.org
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

[attachment "Ltr Massey 10-21-2012.pdf" removed by John St.Croix/
ETHICS/SFGOV]

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Tel: (415) 831-3720
Fax: (415) 831-3721
Email: grossman356@mac.com

December 18, 2012

By Facsimile and Email

Ms. Andrea Ausberry, Administrator
Sunshine Ordinance Task Force
City Hall - Room 244
1 Dr. Carlton B. Goodlett Place San
Francisco, CA 94102-4689

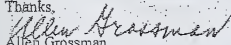
RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry;

When reviewing my Complaint and my original records request I found I had to revise the "Alleged Violations" section to conform to my request. Since I wasn't sure how you would want it handled, I decided to send you a corrected first page of the Complaint with that changed section, which you can substitute for the first page. It is attached.

Please let me know if that is not how you want it handled. If acceptable, please send me a copy of yours to Mr. St. Croix and the other persons who received the original version.

Thanks,


Allen Grossman

ALLEN GROSSMAN
111 30th AVENUE
SAN FRANCISCO, CALIFORNIA 94121-1005
TELEPHONE: (415) 831-3720
FACSIMILE: (415) 831-3721
Email: grossman356@mac.com

FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry
Administrator
Sunshine Ordinance Task Force

FAX Number: (415) 554-5163

Phone Number: (415) 554-7724

Number of Pages: 3, including cover sheet

Date: December 18, 2012

From: Allen Grossman

Message: Letter + Amended Page 1 dated today re #12056.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 12/18/2012 09:03
NAME : SFUFO/GROSSMAN
FAX : 4188313721
TEL : 4188313720
SER.# : 60J395977

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

12/18 09:02
5545163
00:01:20
03
OK
STANDARD

ALLEN GROSSMAN
111 30th AVENUE
SAN FRANCISCO, CALIFORNIA 94121-1005
TELEPHONE: (415) 831-3720
FACSIMILE: (415) 831-3721
Email: grossman356@mac.com

RESENDING
FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry
Administrator
Sunshine Ordinance Task Force

FAX Number: (415) 554 -5163

Phone Number: (415) 554 -7724

Number of Pages: 14, including cover sheet

Date: November 19, 2012

From: Allen Grossman

Message: Complaint against John St. Croix,
Executive Director, Ethics Commission

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 11/19/2012 10:45
NAME : SFUC/GROSSMAN
FAX : 4158313721
TEL : 4158313720
SER.# : G0J395977

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
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11/19 10:38
5545163
00:06:49
14
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STANDARD



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIEENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Via E-Mail

December 6, 2012.

Andrea Ausberry, Administrator
Sunshine Ordinance Task Force.
City Hall – Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry:

On November 29, 2012, the Ethics Commission received notice of Case No. 12056 (*Allen Grossman v John St. Croix, Executive Director, Ethics Commission*). In his complaint, Mr. Grossman alleged that Mr. St. Croix failed “to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b)(1)(i) and (ii).”

Background

On October 3, 2012, Mr. Grossman faxed a public records request to the Ethics Commission for the following:

“...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (“Draft Amendments”) and (b) the September 14, 2012 staff report (“Staff Report”) referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.”

Steven Massey responded to this request on October 12, 2012. He provided 127 documents electronically; six had been partially redacted. He also informed Mr. Grossman that the Commission was “withholding other documents in their entirety,

pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.”

On October 21, 2012, Mr. Grossman faxed a letter to Mr. Massey. He stated that it was “incumbent on [Mr. St. Croix] to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.” Mr. Grossman referenced Sunshine Ordinance sections 67.24(b)(ii) and (iii), which describe specific records that are subject to disclosure, notwithstanding any exemptions otherwise provided by law. Mr. Grossman noted that if any of the withheld records fall within either of the subsections, then the records “are not exempt by these express provisions of the Sunshine Ordinance.”

On November 1, 2012, Mr. Grossman sent an e-mail to Mr. Massey about his October 21, 2012 letter that “raises some questions regarding the basis on which Mr. St. Croix’s refused to make the copies of some unidentified public records available...Ignoring the letter is not an appropriate response.”

On November 2, 2012, I responded via e-mail. I informed Mr. Grossman that he had already received the documents responsive to his request and that the Commission is not required to create documents that do not exist.

On or about November 19, 2012, Mr. Grossman filed this complaint with the Sunshine Ordinance Task Force.

Applicable Law

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department’s legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

...

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

...

Analysis

Mr. Grossman first alleges that I failed "to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b)." Mr. Grossman has misinterpreted Sunshine Ordinance sections 67.27(a) and (b). There is no requirement in those subsections that a responding department must "demonstrat[e] that each such unidentified withheld record is exempt." According to the *Good Government Guide: 2010-2011 Edition* ("GGG"), published by the Office of the City Attorney, the law does not require a responding department withholding records to create a privilege log identifying the withheld records. (See GGG, p. 86.)

Sunshine Ordinance section 67.27 requires that any withholding of information be justified, in writing, as follows: (a) a withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority. (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere..."

In its October 12, 2012 e-mail response to Mr. Grossman, staff provided the required justification of withholding of information, citing California Government Code section 6254(k); California Evidence Code sections 952 and 954; and California Code of Civil Procedure section 2018.030. This written justification was made in accordance with both Sunshine Ordinance section 67.27(a) and section 67.27(b). Mr. Grossman even italicized staff's written justification on page 2 of his complaint. As the Ethics Commission is not required to create documents that do not exist, there were no additional documents for staff to provide that were responsive to his October 3, 2012 request. Therefore, I respectfully request that the Sunshine Ordinance Task Force find no violation, as staff has provided Mr. Grossman with a written justification of withholding of records in a timely manner, in accordance with Sunshine Ordinance section 67.27(a) and (b).

Secondly, Mr. Grossman also appears to allege that I failed to disclose documents that were required to be disclosed under "Section 67.42, subdivision (b)(1)(i) and (ii)." Section 67.42 of the Sunshine Ordinance does not exist. Therefore, I will respond to this allegation under the assumption that Mr. Grossman intended to reference section 67.24(b)(1)(i) and (ii).

In his October 21, 2012 letter (which Mr. Grossman attached as "Document #3" to his complaint), Mr. Grossman stated that the October 12, 2012 "response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1)..." It is unclear what law requires that staff mention this particular provision of the

Sunshine Ordinance in its response to his October 3, 2012 records request. Sunshine Ordinance section 67.24(b)(1) identifies public information that must be disclosed. There is no requirement that a responding party specifically mention it in its response to a public records request.

In responding to all public record requests, staff thoroughly reviews the Commission's files to ensure that we identify all records that are responsive to the request. This review includes a review for any documents subject to disclosure under Sunshine Ordinance subsections 67.24(b)(1)(i) and (ii). Mr. Grossman appears to have made an assumption that documents subject to disclosure under these subsections were withheld. That is not the case.

Mr. Grossman received all responsive documents to his request that were subject to disclosure. He received these documents in the format requested and in a timely manner.

Therefore, as Mr. Grossman received all documents subject to disclosure and as staff justified the withholding of information in its October 12, 2012 e-mail response in accordance with Sunshine Ordinance 67.27, I respectfully request that the Sunshine Ordinance Task Force dismiss this matter:

Sincerely,

/s/ John St. Croix

John St. Croix
Executive Director

Cc (e-mail): Allen Grossman, Complainant

Ausberry, Andrea

From: Allen GROSSMAN [grossman356@me.com]
Sent: Monday, March 18, 2013 4:02 PM
To: sunshinechairgrant@gmail.com
Cc: SOTF; St.Croix, John
Subject: SOTF Complaint #12056

Dear Chair Grant,

This complaint was refiled on November 29, 2012. At that time, I expected it would be heard with a month or two as had been the SOTF's prior practice with the other complaints I filed over a period of four or five years. The SOTF's practice had been to observe the requirements of Section 67.21(e) of the Sunshine Ordinance that requires the SOTF to inform the complainant of its determination "no later than 45 days" from when the petition (complaint) is received. That section is quoted below.

On February 25, I sent the SOTF Administrator an email requesting that my complaint #12056 be put on the March 6, 2013 agenda -- some 98 days after the second filing. I asked that she take that up with you. As you know, my complaint was not put on the agenda.

In any case, my wife and I are leaving for a long planned five week vacation on April 3, the date of your next regularly scheduled meeting. It does not appear there will be a special SOTF meeting before then. We will still be away on May 1, as well, when the following regular meeting is scheduled. That means that the hearing on my complaint will have to wait until the June SOTF meeting, unless a May Special Meeting is called after May 9th.

For that reason, I would appreciate your setting the hearing of my complaint for the June meeting, assuming Mr. St. Croix is available.

Thank You,

Allen Grossman

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public.



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

June 5, 2013 – 4:00 PM

Regular Meeting

Members: Kitt Grant (Chair), Louise Fischer (Vice-Chair),
Richard Knee, Allyson Washburn, David Pilpel,
David Sims, Todd David, Chris Hyland, Bruce Oka

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

The meeting was called to order at 4:19 p.m. Chair Grant was noted absent. There was a quorum.

Administrator Andrea Ausberry announced a request from the Complainant and Respondent for File No. 12055 to be continued to August 2013.

Member Pilpel, seconded by Member Knee, moved to CONTINUE File No. 12055 to August 2013.

Public Comment:
None.

The motion PASSED without objection.

The Administrator announced a request from the Complainant for File Nos. 13005 and 13011 to be continued to the July 2013.

Member David, seconded by Member Knee moved to CONTINUE File Nos. 12005 and 13011 to July.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 8 - Knee, Washburn, Pilpel, Sims, David, Hyland, Oka, Fischer

Noes: 0

Absent: 1 - Grant

2. **File No. 12055:** Complaint filed by Wood Robbins LLP, representing Pacific Polk Properties, LLC against Dennis Herrera, City Attorney for allegedly not producing documents pertaining to the project at 1601 Larkin Street

The Task Force continued the item to August 2013, under Item No. 1 (Agenda Changes).

3. **File No. 12056:** Complaint filed by Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance

Member Knee, seconded by Member Oka, moved to find jurisdiction.

Public Comment:

None.

The motion PASSED without objection.

Allen Grossman (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of Complainant. John St. Croix, Executive Director, Ethics Commission (Respondent), provided an overview of the Ethics Commission's defense and requested the Task Force to dismiss the complaint. There were no speakers in support of Respondent. A question and answer period followed. Respondent waived rebuttal opportunity. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Pilpel, seconded by Member David, moved to CONTINUE File No. 12056 to July meeting.

Public Comment:

None.

The motion FAILED by the following vote:

Ayes: 2 - Pilpel, David,

Noes: 6 - Knee, Washburn, Sims, Hyland, Oka, Fischer

Absent: 1 - Grant

Member Washburn, seconded by Member Knee, moved to find the records disclosable under Sunshine Ordinance Section 67.21(b).

Public Comment:

Peter Warfield expressed support of the motion.

The motion PASSED by the following vote:

Ayes: 6 - Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: 2 - Pilpel, David

Absent: 1 - Grant

Member Washburn, seconded by Member Knee, moved to find the records disclosable under Sunshine Ordinance Section 67.24(b)(1).

Public Comment:

Peter Warfield expressed support of the motion.

The motion FAILED by the following vote:

Ayes: 5 - Knee, Washburn, Sims, Hyland, Oka

Noes: 3 - Pilpel, David, Fischer

Absent: 1 - Grant

Member Fischer, seconded by Member David, moved to rescind the previous vote.

Public Comment:

None.

The motion PASSED without objection.

Member Fischer, seconded by Member David, moved to find the records disclosable under Sunshine Ordinance Section 67.24(b)(1); referral to Compliance and Amendments Committee.

Public Comment:

Peter Warfield spoke in objection to the motion; Paula Datesh spoke in support of the motion.

The motion PASSED by the following vote:

Ayes: 6 - Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: 2 - Pilpel, David

Absent: 1 - Grant

MEETING RECESS - 6:30 p.m. to 6:40 p.m..

4. **Public Comment:**

Paula Datesh expressed concern with the Arts Commission making false allegations against her;
Peter Warfield expressed concern with the referral of his complaint from Education, Outreach and Development to the Task Force not agendaized for its June meeting;
Charles Pitts asked when the Task Force would make recommendations for amendments to the Sunshine Ordinance for the ballot.

5. **File No. 12059:** Complaint filed by Supreet Pabla, SEIU Local 1021 against the Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees.

Member Knee, seconded by Member Oka, moved to find jurisdiction.

Public Comment:

None.

The motion PASSED without objection.

Supreet Pabla, SEIU Local 1021 (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of Complainant. The Respondent was not present for the hearing. A question and answer period followed.

Member Knee, seconded by Member David, moved to find the Human Services Agency in violation of Sunshine Ordinance Sections 67.21(b) for failing to adhere to records request within timeframe; 67.21(e) for Respondent's failure to attend the hearing proceedings and explain the basis for its decision to withhold the records requested; 67.26(c) for failing to keep withholding to a minimum; 67.27 for failing to justify withholding; and 67.29-7 for failing to maintain its correspondence and records; referral to Compliance and Amendments Committee.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 - Knee, Washburn, Pilpel, Sims, David, Hyland, Oka, Fischer

Noes: 0

Absent: 1 – Grant

6. **File No. 13005:** Complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission.

The Task Force continued the item to August 2013, under Item No. 1 (Agenda Changes).

7. **File No. 13011:** Complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary.

The Administrator announced a request from the Complainant for File Nos. 13005 and 13011 to be continued to the July 2013, meeting.

Member David, seconded by Member Knee moved to CONTINUE File Nos. 12005 and 13011 to July.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 - Knee, Washburn, Pilpel, Sims, David, Hyland, Oka, Fischer

Absent: 1 - Grant

8. Motion (a) to communicate to the appropriate State government officials the Task Force's opposition to proposals in the State's draft budget for Fiscal Year 2013-2014 to (1) impose fees for access to court records and (2) halt State reimbursements to local governments for expenses incurred in complying with State public-records laws; and (b) to inform the local news media of said communications.

Member Knee, seconded by Member Oka, moved to send a letter to the Governor and California State Senators stating the Task Force's opposition to the State budget proposals and to send a press release to San Francisco community based news papers.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 - Knee, Washburn, Sims, David, Hyland, Oka, Fischer

Noes: 1 - Pilpel

Absent: 1 - Grant

9. **Approval of Minutes from the January 16, 2013 Special Meeting.**

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

Public Comment:

None.

The motion PASSED without objection.

10. **Approval of Minutes from the February 6, 2013 Regular Meeting**

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

Public Comment:

None.

The motion PASSED without objection.

11. Approval of Minutes from the March 6, 2013 Regular Meeting.

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

Public Comment:

None.

The motion PASSED without objection.

12. Approval of Minutes from the April 3, 2013 Regular Meeting.

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

Public Comment:

None.

The motion PASSED without objection.

13. Approval of Minutes from the May 1, 2013 Regular Meeting.

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

Public Comment:

None.

The motion PASSED without objection.

14. Report: Compliance and Amendments Committee meeting of April 16, 2013.

Member Washburn, Chair of the Compliance and Amendments Committee, reported on the April 16, 2013 meeting on behalf of the Compliance and Amendments Committee.

Public Comment:

None.

15. Report: Education, Outreach and Training Committee meetings of April 29, 2013 and May 13, 2013.

Member Pilpel, Chair of the Education, Outreach and Training Committee, reported on the April 29, 2013, and May 13, 2013, meetings on behalf of the Education, Outreach and Training Committee.

Public Comment:
None.

16. **Administrator's Report.**

Report was given Andrea Ausberry, Sunshine Ordinance Task Force Administrator, on behalf of the Sunshine Ordinance Task Force Office.

Public Comment:
None.

17. **Announcements, Comments, Questions, and Future Agenda Items.**

Member Knee shared the status of Senate Bill 52 sponsored by Leno and Hill, which would require campaign ads and website to list the top sources of campaign funding and Assembly Bill 400 sponsored by Assembly Member Paul Fong which would require Petition circulators to have available a list of the top source of campaign funding.

Public Comment:
None.

18. **ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:38 p.m.

APPROVED: April 30, 2014



Victor Young
Administrator
Sunshine Ordinance Task Force



SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
CITY AND COUNTY OF SAN FRANCISCO
AGENDA

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

August 20, 2013 – 4:00 P.M.

Regular Meeting

Members: Allyson Washburn (Chair),
Richard Knee, Kitt Grant

1. **CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES**
2. **Adoption of July 16, 2013, Regular Meeting Minutes.** (Discussion and Action) *(attachment) (approximately 5 minutes)*
3. **File No. 12056:** Hearing on the status of the Order of Determination of Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. (Discussion and Action) *(attachment) (approximately 30 minutes)*
4. **File No. 12059:** Hearing on the status of the Order of Determination of Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. (Discussion and Action) *(attachment) (approximately 30 minutes)*
5. **Public Comment:** Members of the public may address the Compliance and Amendments Committee on matters that are within Sunshine Ordinance Task Force's jurisdiction but not on today's agenda. (No Action). **Public Comment shall be taken one hour after meeting convenes.**
6. **Administrator's Report.** (Discussion and Action) *(approximately 5 minutes)*
7. **Announcements, Comments, Questions, and Future Agenda Items.** (No Action)
8. **ADJOURNMENT**

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

Hearing Procedures

- | | | |
|----|--------------------------------------------------------------------------------------------------------------|----------------------|
| 1. | Complainant presents his/her facts and evidence | 5 minutes |
| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. | City responds | 5 minutes |
| | Other parties of City respond | Up to 3 minutes each |
| | <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. | Matter is with the Task Force for discussion and questions. | |
| 4. | Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. | Matter is with the Task Force for motion and deliberation. | |
| 6. | Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and

71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics.

File No. 12056

SOTF Item No. _____

CAC Item No. 3

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF)

Date: _____

Compliance and Amendments Committee (CAC)

Date: August 20, 2013

CAC

☒

Memorandum

☒

Order of Determination

☒

Complaint and Supporting documents

☒

Respondent's Response

☐

Minutes

☐☐☐☐☐☐☐☐

OTHER

☐☐☐☐☐

Completed by: Andrea Ausberry Date August 15, 2013

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 75 pages.
The complete document is in the file.



ORDER OF DETERMINATION

June 24, 2013

DATE THE DECISION ISSUED

June 5, 2013

ALLEN GROSSMAN VS. JOHN ST. CROIX, ETHICS COMMISSION (CASE NO. 12056)

FACTS OF THE CASE

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

COMPLAINT FILED

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

HEARING ON THE COMPLAINT

On June 5, 2013, Complainant Allen Grossman appeared before the Task Force and presented his claim. Respondent, John St. Croix, Executive Director, Ethics Commission, presented the Ethics Commission's defense.

The issue in the case is whether the Respondent violated Sections 67.21, 67.24, and 67.27 of the Ordinance and/or Sections 6253 and 6254 of the California Public Records Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds the testimony of Mr. Grossman to be persuasive and finds Sections 67.21(b) and 67.24(b)(1) of the Ordinance to be applicable in this case. The Task Force does not find the testimony provided by John St. Croix, Executive Director, Ethics Commission, persuasive to this case.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the records requested from the Ethics Commission are disclosable public records and finds that Respondent has violated Section 67.21(b) of the Sunshine Ordinance for failure to provide the records within ten days following receipt of a request and Section 67.24(b)(1) of the Sunshine Ordinance for withholding records subject to disclosure. John St. Croix, Executive Director, Ethics Commission, shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on August 20, 2013.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 5, 2013, by the following vote:

(Washburn/Knee) (Violation 67.21(b))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

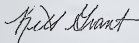
Absent: Grant

(Fischer/David) (Violation 67.24(b)(1))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

Absent: Grant



Kitt Grant, Chair
Sunshine Ordinance Task Force

c: Jerry Threeet, Deputy City Attorney
Allen Grossman, Complaint
John St. Croix, Executive Director Respondent

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: June 3, 2013
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

COMPLAINT

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

COMPLAINANT FILES COMPLAINT:

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

JURISDICTION

The Ethics Commission ("Ethics") is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it and its staff. Ethics does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.24 governs categories of required disclosure that may exceed those of CPRA.
- Section 67.27 governs written justifications for withholding of records.

Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.
- Section 6254 governs exemptions from disclosure.

BACKGROUND

Complainant sent a records request to St. Croix on October 3, 2012, requesting records related to Ethics' draft amendments to its regulations governing the handling of complaints related to violations of the Sunshine Ordinance (see Complaint for a more exact and detailed description of the request).

On October 12, 2012, Steven Massey responded on behalf of Ethics and St. Croix by email. The email explained that voluminous responsive documents would be provided on a compact disk, as it was not possible to send such volume via email. Massey's email also

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 2
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

explained that Ethics had redacted some information on some documents “pursuant to California Government Code Section 6254.21, in accordance with [] Administrative Code Section 67.26”, which were placed in a separate folder on the disk marked “redacted”. The email further explained that some documents were withheld “in their entirety pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.” (These are state statutes providing for the attorney work product privileges and the attorney-client privileges.)

Complainant responded via facsimile letter on October 21, 2012. Complainant’s letter mainly asserts that Massey’s invocation of the attorney work product and attorney client privileges to justify withholding an unknown number of otherwise undescribed documents, was not a proper response to his records request. The letter goes on to state that a proper response “must describe, in some comprehensible way, each of those withheld public records he claims is subject to the [asserted privilege].” The letter also asserts that any records that fall within Section 67.24(b)(1) of the Ordinance are not exempt from disclosure, even if they otherwise might constitute attorney-client or attorney work product privileged material. (Section 67.24(b)(1)(iii) covers mainly attorney-client communications related to the state and local public records laws.) The letter requested a response to these points.

On November 1, 2012, Complainant again requested a supplemental response from Ethics.

On November 2, 2012, Mr. St. Croix responded on behalf of Ethics, stating, “You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.”

On November 19, 2012, Complainant filed this complaint, setting out the above allegations.

On December 6, 2012, Mr. St. Croix responded on behalf of Ethics to the Complaint. The letter states that Ethics provided 127 documents to Complainant in response to his request, 6 of which has been partially redacted. The letter also argues that, in contrast to Complainant’s position, there “is no requirement in [Sunshine Ordinance sections 67.27(a) and (b)] that a responding department must ‘demonstrat[e] that each such unidentified withheld record is exempt.’” The letter states that Ethics’ response to the records request provided written justification for withholding public information by citing to specific statutes, as required by the Ordinance. The letter further states that Ethics withheld no documents that would be subject to the provisions of Section 67.24(b)(1) of the Ordinance. The letter concludes that Complainant received all documents that were subject to disclosure in a timely manner and in accordance with the requirements of law.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What public records or information, if any, does Complainant allege is in the custody of Ethics that should have been provided but has not been provided?
- How many records were withheld in their entirety by Ethics? What was the nature of these documents?

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 3
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did Ethics timely respond to the request?
- Did Ethics fail to provide discloseable public records or information within its custody?
- Is Ethics required to provide Complainant a “privilege log” for records that are withheld?

SUGGESTED ANALYSIS**Attorney-Client Privilege**

Section 67.27 of the Sunshine Ordinance allows for “withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority.” Records that contain attorney-client privileged information are protected from disclosure as a public record under Government Code §§ 6254(k) and 6276.04, and Evid. C. § 954. Gov’t. Code § 6254(k) exempts from disclosure “[r]ecords, the disclosure of which is exempted or prohibited pursuant to [] state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” Gov’t. Code § 6276.04 includes among its specifically enumerated state laws exempting records from disclosure: “Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.”

It is clear from these provisions that attorney-client privileged information is generally protected from disclosure under both the Public Records Act and the Sunshine Ordinance. In *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, the California Supreme Court held that the privilege protects from disclosure confidential communications between a city attorney and its municipal client even when not provided in connection to litigation. *City of Palmdale, supra*, 5 Cal.4th at 371. In discussing its holding, the court stated:

Open government is a constructive value in our democratic society. [] The attorney-client privilege, however, also has a strong basis in public policy and the administration of justice. The attorney-client privilege has a venerable pedigree that can be traced back 400 years. “[T]he privilege seeks to insure the ‘right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice[.]’”

. . . .

A city [department] needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel []. The public interest is served by the privilege because it permits local government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary conflict with various members of the public.

City of Palmdale, supra, 5 Cal.4th at 380-381.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 4
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

An exception to this rule applies when the attorney client communication comes within the ambit of Sections 67.21(i) or 67.24(b)(1) of the Ordinance.

Attorney Work Product Doctrine

Section 67.27 of the Sunshine Ordinance allows for "withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority." Gov't. Code Section 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is *exempted* [] pursuant to [] state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Section 6726.04 of the Public Records Act specifically provides that attorney work product documents are exempt from disclosure as public records. That section in turn refers to Code of Civil Procedure Section 2018.030, which defines attorney work product to mean "[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories[.]"

California courts have applied the work product privilege to exempt records from disclosure in the context of public records requests. (See e.g., *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 833 [public agency may rely on the attorney work product privilege to decline to disclose a document].) The *Axelrad* court further held that the attorney work product privilege "is not limited to writings created by a lawyer in anticipation of a lawsuit. It applies as well to writings prepared by an attorney while acting in a nonlitigation capacity." (82 Cal.App.4th at p. 833.) Also, courts have expressly recognized that internal attorney memoranda, correspondence and notes fall squarely within the attorney work product privilege. (See e.g., *Hickman v. Taylor* (1947) 329 U.S. 495, 511; *Popelka, Allard, McCowan & Jones v. Superior Court* (1980) 107 Cal.App.3d 496, 500.)

Privilege Logs

Due to its close relevance to the issues in this Complaint, I quote at length from a California Supreme Court case interpreting the California Public Records Act ("CPRA"), and overturning a Court of Appeals ruling that had required a county to provide a log of individual records withheld from production under CPRA.

Haynie v. Superior Court (2001) 26 Cal.4th 1061.

The Court of Appeal also ruled that, upon receiving Haynie's Demand for Public Records, the County was obligated to determine whether the records exist, "enumerate or describe the records so discovered, identify exemptions applying to any enumerated or described records, and disclose the remaining records." In this court, the County does not dispute its obligation to determine whether requested records exist and whether exemptions apply to those records nor does it deny its duty to disclose nonexempt records that it has found. The County objects only to the ruling of the Court of Appeal that it should have provided Haynie with an enumeration or description of all responsive records, regardless of whether those records were exempt from disclosure. [26 Cal.4th at 1072.]

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 5
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

[...]

Haynie suggests that such a requirement may be inferred from *section 6255, subdivision (a)*, which provides: "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." [...] When an agency, in compliance with *section 6255*, articulates one or more of these exemptions, it will necessarily reveal the general nature of the documents withheld. For example, an agency that invokes *subdivision (f) of section 6254* has revealed that the withheld documents are library circulation records. Here, the County's invocation of *section 6254(f)* revealed that the withheld documents were records of an investigation. What *section 6255* does not require, however, is for the agency to go further and *describe* each of the documents falling within the statutory exemption. The Legislature, which has carefully detailed the components of the agency's denial of a CPRA request, even to the point of requiring the agency to "set forth the names and titles or positions of each person responsible for the denial" (§ 6253, *subd. (d)*), is fully capable of requiring agencies to include a log of withheld documents. Given this detailed scheme, it would be inappropriate for us to enlarge the agency's burden under the guise of interpreting the statute. [26 Cal.4th at 1074.]

[...]

We have no doubt that an agency may elect to create such a list, with or without requiring reimbursement for its costs, but we find nothing in the act itself that mandates any action other than opening for inspection the records identified as coming within the scope of the request or providing copies thereof at the expense of the person requesting copies. Preparing an inventory of potentially responsive records is not mandated by the CPRA. [26 Cal.4th at 1075.]

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 6
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

- (a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- (b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

[]

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 7
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CALIFORNIA PUBLIC RECORDS ACT**SECTION 6254. EXEMPTION OF PARTICULAR RECORDS**

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

[. . .]

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

SECTION 6276. RECORDS OR INFORMATION NOT REQUIRED TO BE DISCLOSED

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

SECTION 6276.04. "AERONAUTICS ACT" TO "AVOCADO HANDLER TRANSACTION RECORDS"

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.
Attorney work product, confidentiality of, Section 6202, Business and Professions Code.
Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010), of Title 4, of Part 4 of the Code of Civil Procedure.

SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT

Date: November 19, 2012; amended December 18, 2012.

Complainant: Allen Grossman
111 30th Avenue
San Francisco, CA 94121
Facsimile: (415) 831-3721
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director
San Francisco Ethics Commission

Persons contacted: John St. Croix, Executive Director
San Francisco Ethics Commission
Mr. Steven Massey, Information Technology Officer San
Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Sections 67.21, subdivision (b), 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b) (1) (i) and (iii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the foregoing Commission Notice;

Notice of Consideration of Proposed Regulations at the September 24, 2012
Regular Meeting of the Ethics Commission

SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT

Date: November 19, 2012

Complainant: Allen Grossman
111 30th Avenue
San Francisco, CA 94121
Facsimile: (415) 831-3721
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director
San Francisco Ethics Commission;
Mr. Steven Massey, Information Technology Officer
San Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b) (1) (i) and (ii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

"(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

October 12, 2012: Mr. Massey responded, on behalf of Mr. St. Croix, by email (Document #2) stating, in part:

"We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

"A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030." [Emphasis Added.]

October 21, 2012: Complainant sent the attached letter (Document #3) by Facsimile to Mr. Massey in which Complainant advised him that:

"There is no point in my considering whether any of these "confidentiality" protections – the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) – are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each one is and then determine whether or not I concur that one or two of those "protections" would apply.

"By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the

attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

"The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

"Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance."

November 1, 2012: Complainant sent the following email Mr. Massey (copy to Mr. St. Croix):

To: Steven.Massey@SFGOV.ORG
From: Allen Grossman <grossman356@mac.com>
Date: 11/01/2012 04:29PM
Cc: john.st.croix@sfgov.org
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it

appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

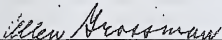
November 2, 2012 Mr. St. Croix responded by email (Document #4) as follows:

From: john.st.croix@sfgov.org
Subject: Re: October 3, 2012 Records Request
Date: November 2, 2012 3:04:50 PM PDT
To: Allen Grossman <grossman356@mac.com>
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. *You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed. [Emphasis Added.]*

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Hearing: Complainant requests a public hearing before the Sunshine Ordinance Task Force.


Allen Grossman

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Email: grossman356@mac.com
Phone: (415) 831-3720
FAX: (415) 831-3721

VIA FACSIMILE

To: Mr. John St. Croix, Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA, 94102-6053

Date: October 3, 2012

This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012
Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.

In accordance with Section 67.25(d) of the Sunshine Ordinance, please provide the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling"

basis.

If the requested records are kept electronically or in PDF format, please send them in their original format by email to my above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to my above email address.

This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.

Allen Grossman
Allen Grossman

From: Steven.Massey@SFGOV.ORG
Subject: Response to records request --October 3, 2012
Date: October 12, 2012 2:57:40 PM PDT
To: Allen Grossman <grossman356@mac.com>

Mr. Grossman,

On October 3, 2012, Executive Director St. Croix received the following request from you:

"...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

You requested that the Ethics Commission send the records to your e-mail address.

We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.

Please let me know whether you would like the Commission to provide the disc or whether you will provide your own. The responsive documents to your request are available for inspection and copying.

Sincerely,

Steven Massey

#2

Information Technology Officer
CCSF Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(P) 415-252-3108
(F) 415-252-3112
Steven.Massey@sfgov.org
<http://www.sfethtics.org>

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Tel: (415) 831-3720
Fax: (415) 831-3721
Email: grossman356@mac.com

October 21, 2012

BY FACSIMILE

Mr. Steven Massey
Information Technology Officer
CCSF Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: October 3, 2012 Records Request

Dear Mr. Massey:

In your October 12, 2012 Email responding to the subject Records Request you advised me:

"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030."

My Records Request was directed to Mr. St. Croix, Executive Director of the Ethics Commission. Although the complete response - that is, the copies of public records you are making available to me (including those with redactions) as described in your email and notice that the decision to withhold public records from disclosure - came from you, I can properly assume that Mr. St. Croix approved the response and that he takes full responsibility for it. If otherwise, please advise me.

So that we are looking at the specific sections of the state statutes to which you refer as the basis for withholding "other documents", I quote them in full on the Schedule attached to this letter. CPRA §6254(k) is not an exemption by itself, but incorporates state and federal law exemptions. Evidence Code §§952 and 954 create the "attorney-client privilege" and CCP §2018.30 creates two so-called "work product" doctrines, one absolute and the other conditional. Mr. St. Croix relies on these two exemptions to justify his withholding of certain unidentified public records. However, in the case of the conditional work product doctrine - §2018.30(b) - it is not clear whether it is even applicable when no litigation is involved.

There is no point in my considering whether any of these "confidentiality" protections - the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) - are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each

#3

one is and then determine whether or not I concur that one or two of those "protections" would apply.

By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(i) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance.

§67.25 provides, in part:

"No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute."

§67.27 provides, in part:

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority. [Emphasis added.]

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere. {Emphasis Added.}

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

Taken together these provisions require Mr. St. Croix, as the custodian of the requested records, to review each of the withheld records, provide some description of each (without necessarily disclosing any public information in it that he considers exempt) and then cite the specific statutory exemption that he claims exempts it or the redacted information from disclosure.

Before I pursue my Records Request any further, Mr. St. Croix is reminded that he cannot summarily deny my constitutionally protected right to access public records and public information with broad claims of exemptions to a group of varying types of public records contrary to what the CPRA and the Sunshine Ordinance were designed to prevent.

Very Truly Yours,

AS/AM

Allen Grossman

CPRA § 6254(k): Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following: (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Evidence Code §952: As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Evidence Code §954: Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege;
or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

...The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

Code of Civil Procedure §2018.030:

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

MEMORANDUM

Date: May 28, 2013

To: Members, Sunshine Ordinance Task Force

Re: Complaint # 12056:

Grossman vs. John St. Croix, Executive Director, SF Ethics Commission

My complaint and Mr. St. Croix's response are to be heard at SOTF's June 5, 2013 regular meeting. Currently the SOTF has nine members, two short of the statutorily required eleven. Under the SOTF current bylaws, the "affirmative vote of a majority of the members of the Task Force (six votes) shall be required for the approval of all substantive matters."

Determinations by the SOTF whether a respondent custodian agency, department or City officer responding to a complaint has or has not complied with the Sunshine Ordinance are "substantive matters" requiring approval by six votes irrespective of the number of SOTF members voting.

Following a hearing on the complaint, the SOTF's practice has been to consider a motion with respect to the complaint's claims of respondent's non-compliance with the Sunshine Ordinance. That motion requires the "aye" vote of at least six members that the respondent had not complied. Thus, when less than all eleven members are present and voting, the complainant needs more than a simple majority for such a motion to pass. If all nine current members attend the June 5 meeting and vote on my complaint, a two-thirds majority – six out of nine votes – will be required for a favorable determination. If only eight members attend and vote, the percentage rises to 75%; if only seven attend and vote, it is 87.5%. As a result, this combination of the six-vote rule and the formulation of the motion stack the deck against every complainant.

However, this combination is contrary to both the Sunshine Ordinance and the CPRA. *The Sunshine Ordinance and the CPRA both definitively provide that all public records are presumptively fully disclosable and the burden is on the custodian to prove, i.e., justify, the application of a specific exemption.*

Sunshine Ordinance:

§67.21(g): "In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies."

§67.27 JUSTIFICATION OF WITHHOLDING:

"Any withholding of information shall be justified, in writing, as follows:

"(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

"(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

"(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position."

CPRA:

§6255(a): "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

Thus, the burden of proving, i.e., "justifying", the refusal to disclose the public record is on the respondent, not on the complainant to disprove any claimed "justification".

For that reason, the SOTF's practice with respect to motions involving such non-compliance with the Sunshine Ordinance should be changed. The motion must be, in effect, that the respondent has justified the application of the claimed exemption or prohibition to the public record(s) requested, not that the complainant has proven that the records are not exempt from disclosure. If the motion is put in such terms, the six-vote rule will be consistent with applicable law, not contrary to it. It will also bring some fairness back into the process.

From: john.st.croix@sfgov.org
Subject: Re: October 3, 2012 Records Request
Date: November 2, 2012 3:04:50 PM PDT
To: Allen Grossman <grossman356@mac.com>
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

-----Allen Grossman <grossman356@mac.com> wrote: -----
To: Steven.Massey@SFGOV.ORG
From: Allen Grossman <grossman356@mac.com>
Date: 11/01/2012 04:29PM
Cc: john.st.croix@sfgov.org
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

[attachment "Ltr Massey 10-21-2012.pdf" removed by John St.Croix/
ETHICS/SFGOV]

#4

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1003
Tel: (415) 831-3720
Fax: (415) 831-3721
Email: grossman356@mac.com

December 18, 2012

By Facsimile and Email

Ms. Andrea Ausberry, Administrator
Sunshine Ordinance Task Force
City Hall - Room 244
1 Dr. Carlton B. Goodlett Place San
Francisco, CA 94102-4689

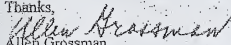
RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry;

When reviewing my Complaint and my original records request I found I had to revise the "Alleged Violations" section to conform to my request. Since I wasn't sure how you would want it handled, I decided to send you a corrected first page of the Complaint with that changed section, which you can substitute for the first page. It is attached.

Please let me know if that is not how you want it handled. If acceptable, please send me a copy of yours to Mr. St. Croix and the other persons who received the original version.

Thanks,


Allen Grossman

ALLEN GROSSMAN
111 30th AVENUE
SAN FRANCISCO, CALIFORNIA 94121-1005
TELEPHONE: (415) 831-3720
FACSIMILE: (415) 831-3721
Email: grossman356@mac.com

FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry
Administrator
Sunshine Ordinance Task Force

FAX Number: (415) 554-5163

Phone Number: (415) 554-7724

Number of Pages: 3, including cover sheet

Date: December 18, 2012

From: Allen Grossman

Message: Letter + Amended Page 1 dated today re #12056.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 12/18/2012 09:03
NAME : SPUD/GROSSMAN
FAX : 4158313721
TEL : 4158313720
SER.# : 60395977

DATE, TIME
FAX NO./NAME
DURATION
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12/18 09:02
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00:01:25
03
OK
STANDARD

ALLEN GROSSMAN
111 30th AVENUE
SAN FRANCISCO, CALIFORNIA 94121-1005
TELEPHONE: (415) 831-3720
FACSIMILE: (415) 831-3721
Email: grossman356@mac.com

RESENDING
FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry
Administrator
Sunshine Ordinance Task Force

FAX Number: (415) 554 -5163

Phone Number: (415) 554 -7724

Number of Pages: 14, including cover sheet

Date: November 19, 2012

From: Allen Grossman

Message: Complaint against John St. Croix,
Executive Director, Ethics Commission

IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 11/19/2012 10:45
NAME : SFUC/GROSSMAN
FAX : 4158313721
TEL : 4158313720
SER.# : G8J395977

DATE, TIME
FAX NO./NAME
DURATION
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11/19 10:38
5545163
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14
OK
STANDARD



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMERNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Via E-Mail

December 6, 2012.

Andrea Ausberry, Administrator
Sunshine Ordinance Task Force
City Hall - Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry:

On November 29, 2012, the Ethics Commission received notice of Case No. 12056 (*Allen Grossman v John St. Croix, Executive Director, Ethics Commission*). In his complaint, Mr. Grossman alleged that Mr. St. Croix failed "to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b)(1)(i) and (ii)."

Background

On October 3, 2012, Mr. Grossman faxed a public records request to the Ethics Commission for the following:

"...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

Steven Massey responded to this request on October 12, 2012. He provided 127 documents electronically; six had been partially redacted. He also informed Mr. Grossman that the Commission was "withholding other documents in their entirety,

pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.”

On October 21, 2012, Mr. Grossman faxed a letter to Mr. Massey. He stated that it was “incumbent on [Mr. St. Croix] to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.” Mr. Grossman referenced Sunshine Ordinance sections 67.24(b)(ii) and (iii), which describe specific records that are subject to disclosure, notwithstanding any exemptions otherwise provided by law. Mr. Grossman noted that if any of the withheld records fall within either of the subsections, then the records “are not exempt by these express provisions of the Sunshine Ordinance.”

On November 1, 2012, Mr. Grossman sent an e-mail to Mr. Massey about his October 21, 2012 letter that “raises some questions regarding the basis on which Mr. St. Croix’s refused to make the copies of some unidentified public records available...Ignoring the letter is not an appropriate response.”

On November 2, 2012, I responded via e-mail. I informed Mr. Grossman that he had already received the documents responsive to his request and that the Commission is not required to create documents that do not exist.

On or about November 19, 2012, Mr. Grossman filed this complaint with the Sunshine Ordinance Task Force.

Applicable Law

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department’s legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

...

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

...

Analysis

Mr. Grossman first alleges that I failed "to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b)." Mr. Grossman has misinterpreted Sunshine Ordinance sections 67.27(a) and (b). There is no requirement in those subsections that a responding department must "demonstrat[e] that each such unidentified withheld record is exempt." According to the *Good Government Guide: 2010-2011 Edition* ("GGG"), published by the Office of the City Attorney, the law does not require a responding department withholding records to create a privilege log identifying the withheld records. (See GGG, p. 86.)

Sunshine Ordinance section 67.27 requires that any withholding of information be justified, in writing, as follows: (a) a withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority. (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere..."

In its October 12, 2012 e-mail response to Mr. Grossman, staff provided the required justification of withholding of information, citing California Government Code section 6254(k); California Evidence Code sections 952 and 954; and California Code of Civil Procedure section 2018.030. This written justification was made in accordance with both Sunshine Ordinance section 67.27(a) and section 67.27(b). Mr. Grossman even italicized staff's written justification on page 2 of his complaint. As the Ethics Commission is not required to create documents that do not exist, there were no additional documents for staff to provide that were responsive to his October 3, 2012 request. Therefore, I respectfully request that the Sunshine Ordinance Task Force find no violation, as staff has provided Mr. Grossman with a written justification of withholding of records in a timely manner, in accordance with Sunshine Ordinance section 67.27(a) and (b).

Secondly, Mr. Grossman also appears to allege that I failed to disclose documents that were required to be disclosed under "Section 67.42, subdivision (b)(1)(i) and (ii)." Section 67.42 of the Sunshine Ordinance does not exist. Therefore, I will respond to this allegation under the assumption that Mr. Grossman intended to reference section 67.24(b)(1)(i) and (ii).

In his October 21, 2012 letter (which Mr. Grossman attached as "Document #3" to his complaint), Mr. Grossman stated that the October 12, 2012 "response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1)..." It is unclear what law requires that staff mention this particular provision of the

Sunshine Ordinance in its response to his October 3, 2012 records request. Sunshine Ordinance section 67.24(b)(1) identifies public information that must be disclosed. There is no requirement that a responding party specifically mention it in its response to a public records request.

In responding to all public record requests, staff thoroughly reviews the Commission's files to ensure that we identify all records that are responsive to the request. This review includes a review for any documents subject to disclosure under Sunshine Ordinance subsections 67.24(b)(1)(i) and (ii). Mr. Grossman appears to have made an assumption that documents subject to disclosure under these subsections were withheld. That is not the case.

Mr. Grossman received all responsive documents to his request that were subject to disclosure. He received these documents in the format requested and in a timely manner.

Therefore, as Mr. Grossman received all documents subject to disclosure and as staff justified the withholding of information in its October 12, 2012 e-mail response in accordance with Sunshine Ordinance 67.27, I respectfully request that the Sunshine Ordinance Task Force dismiss this matter:

Sincerely,

/s/ John St. Croix

John St. Croix
Executive Director

Cc (e-mail): Allen Grossman, Complainant

Ausberry, Andrea

From: Allen GROSSMAN [grossman356@me.com]
Sent: Monday, March 18, 2013 4:02 PM
To: sunshinechairgrant@gmail.com
Cc: SOTF; St.Croix, John
Subject: SOTF Complaint #12056

Dear Chair Grant,

This complaint was refiled on November 29, 2012. At that time, I expected it would be heard with a month or two as had been the SOTF's prior practice with the other complaints I filed over a period of four or five years. The SOTF's practice had been to observe the requirements of Section 67.21(e) of the Sunshine Ordinance that requires the SOTF to inform the complainant of its determination "no later than 45 days" from when the petition (complaint) is received. That section is quoted below.

On February 25, I sent the SOTF Administrator an email requesting that my complaint #12056 be put on the March 6, 2013 agenda -- some 98 days after the second filing. I asked that she take that up with you. As you know, my complaint was not put on the agenda.

In any case, my wife and I are leaving for a long planned five week vacation on April 3, the date of your next regularly scheduled meeting. It does not appear there will be a special SOTF meeting before then. We will still be away on May 1, as well, when the following regular meeting is scheduled. That means that the hearing on my complaint will have to wait until the June SOTF meeting, unless a May Special Meeting is called after May 9th.

For that reason, I would appreciate your setting the hearing of my complaint for the June meeting, assuming Mr. St. Croix is available.

Thank You,

Allen Grossman

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public.



SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
CITY AND COUNTY OF SAN FRANCISCO
DRAFT MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

August 20, 2013 – 4:00 P.M.

Regular Meeting

Members: Allyson Washburn (Chair),
Richard Knee, Kitt Grant

1. **Call to order, roll call, and agenda changes.**

The meeting was called to order at 4:00 p.m. Member Grant was noted absent. There was a quorum.

Member Knee, seconded by Member Washburn, moved to EXCUSE Member Grant.

Speakers: None.

There were no speakers. **The motion PASSED without objection.**

2. **Adoption of July 16, 2013, Regular Meeting Minutes.**

Member Knee, seconded by Member Washburn, moved to ADOPT the July 16, 2013 minutes as corrected.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 2 – Knee, Washburn

Excused: 1 – Grant

3. **File No. 12056: Hearing on the status of the Order of Determination of Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance.**

Allen Grossman (Complainant) stated the Ethics Commission has not released the records he originally requested, failing to comply with the Order of Determination. The Complainant responded to questions raised throughout the discussion. There were no speakers in support of the Complainant. Garrett Chatfield, Ethics Commission (Respondent) stated the records the Complainant requested are exempt from disclosure and is the reason the records have been withheld. There were no speakers in support of the Respondent. A question and answer period followed. Respondent waived rebuttal. Complainant provided a rebuttal.

Member Knee, seconded by Member Washburn, moved to refer the matter back to the Task Force with a recommendation of referral to Ethics Commission and the Board of Supervisors for John St. Croix, Executive Director, Ethics Commission failure to comply with the Order of Determination.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 2 – Knee, Washburn

Excused: 1 – Grant

4. **File No. 12059: Hearing on the status of the Order of Determination of Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees.**

Supreet Pabla (Complainant) stated the Human Services Agency has partially complied with the Order of Determination. The Complainant responded to questions raised throughout the discussion. Dan Phillips, spoke in support of the Complainant. Luanne Kim, Human Services Agency (Respondent) stated the records the Complainant requested do not exist, for example the Human Services Agency does not keep records of its parking facilities by union occupancy. There were no speakers in support of the Respondent. A question and answer period followed. Respondent waived rebuttal. Complainant provided a rebuttal.

Member Knee, seconded by Member Washburn, moved to refer the matter back to the Task Force with a recommendation of referral to Ethics Commission for the Human Services Agency's failure to comply with the Order of Determination.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 2 – Knee, Washburn

Excused: 1 – Grant

5. **Public Comment.**

Speakers: None.

6. **Administrator's Report.**

The Administrator presented the report.

Speakers: None.

7. **Announcements, Comments, Questions, and Future Agenda Items.**

Member Knee announced he would not be in attendance for the September Compliance and Amendments Committee meeting.

8. **ADJOURNMENT**

Member Knee, seconded by Member Washburn, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Compliance and Amendments Committee adjourned at the hour of 4:51 p.m.

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

Hearing Procedures

- | | | |
|----|--------------------------------------------------------------------------------------------------------------|----------------------|
| 1. | Complainant presents his/her facts and evidence | 5 minutes |
| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. | City responds | 5 minutes |
| | Other parties of City respond | Up to 3 minutes each |
| | <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. | Matter is with the Task Force for discussion and questions. | |
| 4. | Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. | Matter is with the Task Force for motion and deliberation. | |
| 6. | Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and

71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics.



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

September 4, 2013 – 4:00 PM

Regular Meeting

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Seat 1	(Vacant)	Seat 8	Todd David
Seat 2	Richard Knee (Hold Over)	Seat 9	Chris Hyland
Seat 3	Kitt Grant – Chair	Seat 10	Louise Fischer – Vice Chair
Seat 4	(Vacant)	Seat 11	Bruce Oka (Hold Over)
Seat 5	Allyson Washburn (Hold Over)		
Seat 6	David Pilpel	Ex-officio	Angela Calvillo
Seat 7	David Sims	Ex-officio	(Vacant)

2. **Election of Chair and Vice Chair - Election of Officers; per Article II, Section 3 of the By-Laws:** "The Officers shall be elected at the first regular meeting of the Task Force held on or before July 1 of each year, or at a subsequent meeting, the date of which shall be fixed by the Task Force at the first regular meeting on or after July 1 of each year. If any Task Force office becomes vacant, that office shall be filled at the first meeting after the vacancy occurs." (approximately 15 minutes) (Discussion and Action)
3. **File No. 12056:** The Compliance and Amendments Committee has referred File No. 12056, Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. (approximately 30 minutes) (Discussion and Possible action) (attachment).
4. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. (No Action) Public comment shall be taken at 5:00 pm or as soon thereafter as possible.
5. **File No. 12058:** The Compliance and Amendments Committee has referred File No. 12058, Dominic Maionchi against Recreation and Park for allegedly failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders. (approximately 30 minutes) (Discussion and Possible action) (attachment)

6. **File No. 12059:** The Compliance and Amendments Committee has referred File No. 12059, Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(approximately 30 minutes) (Discussion and Possible action) (attachment)*
7. **File No. 13012:** Complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(approximately 45 minutes) (Discussion and Action)*
8. **File No. 13017:** Complaint filed by William Clark against the Office of the City Attorney for allegedly failing to provide a response to a records request regarding communications between the Arts Commission and Office of the City Attorney concerning time billing for FY 2010-2011. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by William Clark against the Office of the City Attorney for allegedly failing to provide a response to a records request regarding communications between the Arts Commission and Office of the City Attorney concerning time billing for FY 2010-2011. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by William Clark against the Office of the City Attorney for allegedly failing to provide a response to a records request regarding communications between the Arts Commission and Office of the City Attorney concerning time billing for FY 2010-2011. *(approximately 45 minutes) (Discussion and Action)*
9. **File No. 13019:** Complaint filed by Michael Petrelis against the Office of the District Attorney for allegedly violating Sunshine Ordinance section 67.29-6; failing to disclose statements regarding financial interest with the City from donors. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Michael Petrelis against the Office of the District Attorney for allegedly violating Sunshine Ordinance section 67.29-6; failing to disclose statements regarding financial interest with the City from donors. *(approximately 5 minutes) (Discussion and Action)*

- (b) Hearing on complaint filed by Michael Petrelis against the Office of the District Attorney for allegedly violating Sunshine Ordinance §67.29-6; failing to disclose statements regarding financial interest with the City from donors. *(approximately 45 minutes) (Discussion and Action)*
- 10. Approval of Minutes from the March 6, 2013 Regular Meeting. *(approximately 5 minutes) (Action) (attachment)*
- 11. Approval of Minutes from the April 3, 2013 Regular Meeting. *(approximately 5 minutes) (Action) (attachment)*
- 12. Approval of Minutes from the May 1, 2013 Regular Meeting. *(approximately 5 minutes) (Action) (attachment)*
- 13. Approval of Minutes from the June 5, 2013 Regular Meeting. *(approximately 5 minutes) (Action) (attachment)*
- 14. Approval of Minutes from the July 9, 2013 Special Meeting. *(approximately 5 minutes) (Action) (attachment)*
- 15. Approval of Minutes from the August 7, 2013 Regular Meeting. *(approximately 5 minutes) (Action) (attachment)*
- 16. Report: Compliance and Amendments Committee meeting of August 20, 2013. *(approximately 5 minutes) (Discussion) (attachment)*
- 17. Administrator's Report. *(approximately 5 minutes) (Discussion)*
- 18. Announcements, Comments, Questions, and Future Agenda Items. *(approximately 10 minutes) (Discussion and Action)*
- 19. ADJOURNMENT

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:

<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing;. These comments will be made a part of the official public record.

Hearing Procedures

- | | | |
|----|--------------------------------------------------------------------------------------------------------------|----------------------|
| 1. | Complainant presents his/her facts and evidence | 5 minutes |
| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. | City responds | 5 minutes |
| | Other parties of City respond | Up to 3 minutes each |
| | <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. | Matter is with the Task Force for discussion and questions. | |
| 4. | Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. | Matter is with the Task Force for motion and deliberation. | |
| 6. | Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sottf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

File No. 12056

SOTF Item No. 3

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF)

Date: September 4, 2013

Compliance and Amendments Committee (CAC)

Date: _____

CAC/SOTF

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memorandum
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Order of Determination
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint and Supporting documents
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Respondent's Response
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Completed by: Andrea Ausberry Date August 29, 2013

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 75 pages.
The complete document is in the file.



ORDER OF DETERMINATION

June 24, 2013

DATE THE DECISION ISSUED

June 5, 2013

ALLEN GROSSMAN VS. JOHN ST. CROIX, ETHICS COMMISSION (CASE NO. 12056)

FACTS OF THE CASE

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

COMPLAINT FILED

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

HEARING ON THE COMPLAINT

On June 5, 2013, Complainant Allen Grossman appeared before the Task Force and presented his claim. Respondent, John St. Croix, Executive Director, Ethics Commission, presented the Ethics Commission's defense.

The issue in the case is whether the Respondent violated Sections 67.21, 67.24, and 67.27 of the Ordinance and/or Sections 6253 and 6254 of the California Public Records Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds the testimony of Mr. Grossman to be persuasive and finds Sections 67.21(b) and 67.24(b)(1) of the Ordinance to be applicable in this case. The Task Force does not find the testimony provided by John St. Croix, Executive Director, Ethics Commission, persuasive to this case.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the records requested from the Ethics Commission are disclosable public records and finds that Respondent has violated Section 67.21(b) of the Sunshine Ordinance for failure to provide the records within ten days following receipt of a request and Section 67.24(b)(1) of the Sunshine Ordinance for withholding records subject to disclosure. John St. Croix, Executive Director, Ethics Commission, shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on August 20, 2013.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 5, 2013, by the following vote:

(Washburn/Knee) (Violation 67.21(b))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pipel, David


Absent: Grant

(Fischer/David) (Violation 67.24(b)(1))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pipel, David

Absent: Grant



Kitt Grant, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Allen Grossman, Complaint
John St. Croix, Executive Director Respondent

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: June 3, 2013
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

COMPLAINT

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

COMPLAINANT FILES COMPLAINT:

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

JURISDICTION

The Ethics Commission ("Ethics") is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it and its staff. Ethics does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.24 governs categories of required disclosure that may exceed those of CPRA.
- Section 67.27 governs written justifications for withholding of records.

Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.
- Section 6254 governs exemptions from disclosure.

BACKGROUND

Complainant sent a records request to St. Croix on October 3, 2012, requesting records related to Ethics' draft amendments to its regulations governing the handling of complaints related to violations of the Sunshine Ordinance (see Complaint for a more exact and detailed description of the request).

On October 12, 2012, Steven Massey responded on behalf of Ethics and St. Croix by email. The email explained that voluminous responsive documents would be provided on a compact disk, as it was not possible to send such volume via email. Massey's email also

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 2
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

explained that Ethics had redacted some information on some documents “pursuant to California Government Code Section 6254.21, in accordance with [] Administrative Code Section 67.26”, which were placed in a separate folder on the disk marked “redacted”. The email further explained that some documents were withheld “in their entirety pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.” (These are state statutes providing for the attorney work product privileges and the attorney-client privileges.)

Complainant responded via facsimile letter on October 21, 2012. Complainant’s letter mainly asserts that Massey’s invocation of the attorney work product and attorney client privileges to justify withholding an unknown number of otherwise undescribed documents, was not a proper response to his records request. The letter goes on to state that a proper response “must describe, in some comprehensible way, each of those withheld public records he claims is subject to the [asserted privilege].” The letter also asserts that any records that fall within Section 67.24(b)(1) of the Ordinance are not exempt from disclosure, even if they otherwise might constitute attorney-client or attorney work product privileged material. (Section 67.24(b)(1)(iii) covers mainly attorney-client communications related to the state and local public records laws.) The letter requested a response to these points.

On November 1, 2012, Complainant again requested a supplemental response from Ethics.

On November 2, 2012, Mr. St. Croix responded on behalf of Ethics, stating, “You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.”

On November 19, 2012, Complainant filed this complaint, setting out the above allegations.

On December 6, 2012, Mr. St. Croix responded on behalf of Ethics to the Complaint. The letter states that Ethics provided 127 documents to Complainant in response to his request, 6 of which has been partially redacted. The letter also argues that, in contrast to Complainant’s position, there “is no requirement in [Sunshine Ordinance sections 67.27(a) and (b)] that a responding department must ‘demonstrat[e] that each such unidentified withheld record is exempt.’” The letter states that Ethics’ response to the records request provided written justification for withholding public information by citing to specific statutes, as required by the Ordinance. The letter further states that Ethics withheld no documents that would be subject to the provisions of Section 67.24(b)(1) of the Ordinance. The letter concludes that Complainant received all documents that were subject to disclosure in a timely manner and in accordance with the requirements of law.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What public records or information, if any, does Complainant allege is in the custody of Ethics that should have been provided but has not been provided?
- How many records were withheld in their entirety by Ethics? What was the nature of these documents?

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 3
RE: Complaint No. 12056 -- Grossman v. John St. Croix (Ethics Commission)

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did Ethics timely respond to the request?
- Did Ethics fail to provide discloseable public records or information within its custody?
- Is Ethics required to provide Complainant a "privilege log" for records that are withheld?

SUGGESTED ANALYSIS**Attorney-Client Privilege**

Section 67.27 of the Sunshine Ordinance allows for "withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, [or for] withholding on the basis that disclosure is prohibited by law, ... [citing] the specific statutory authority." Records that contain attorney-client privileged information are protected from disclosure as a public record under Government Code §§ 6254(k) and 6276.04, and Evid. C. § 954. Gov't. Code § 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to [] state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Gov't. Code § 6276.04 includes among its specifically enumerated state laws exempting records from disclosure: "Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code."

It is clear from these provisions that attorney-client privileged information is generally protected from disclosure under both the Public Records Act and the Sunshine Ordinance. In *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, the California Supreme Court held that the privilege protects from disclosure confidential communications between a city attorney and its municipal client even when not provided in connection to litigation. *City of Palmdale, supra*, 5 Cal.4th at 371. In discussing its holding, the court stated:

Open government is a constructive value in our democratic society. [] The attorney-client privilege, however, also has a strong basis in public policy and the administration of justice. The attorney-client privilege has a venerable pedigree that can be traced back 400 years. "[T]he privilege seeks to insure the 'right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice[.]'"

A city [department] needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel []. The public interest is served by the privilege because it permits local government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary conflict with various members of the public.

City of Palmdale, supra, 5 Cal.4th at 380-381.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 4
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

An exception to this rule applies when the attorney client communication comes within the ambit of Sections 67.21(i) or 67.24(b)(1) of the Ordinance.

Attorney Work Product Doctrine

Section 67.27 of the Sunshine Ordinance allows for "withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority." Gov't. Code Section 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is *exempted* [] pursuant to [] state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Section 6726.04 of the Public Records Act specifically provides that attorney work product documents are exempt from disclosure as public records. That section in turn refers to Code of Civil Procedure Section 2018.030, which defines attorney work product to mean "[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories[.]"

California courts have applied the work product privilege to exempt records from disclosure in the context of public records requests. (See e.g., *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 833 [public agency may rely on the attorney work product privilege to decline to disclose a document].) The *Axelrad* court further held that the attorney work product privilege "is not limited to writings created by a lawyer in anticipation of a lawsuit. It applies as well to writings prepared by an attorney while acting in a nonlitigation capacity." (82 Cal.App.4th at p. 833.) Also, courts have expressly recognized that internal attorney memoranda, correspondence and notes fall squarely within the attorney work product privilege. (See e.g., *Hickman v. Taylor* (1947) 329 U.S. 495, 511; *Popelka, Allard, McCowan & Jones v. Superior Court* (1980) 107 Cal.App.3d 496, 500.)

Privilege Logs

Due to its close relevance to the issues in this Complaint, I quote at length from a California Supreme Court case interpreting the California Public Records Act ("CPRA"), and overturning a Court of Appeals ruling that had required a county to provide a log of individual records withheld from production under CPRA.

Haynie v. Superior Court (2001) 26 Cal.4th 1061.

The Court of Appeal also ruled that, upon receiving Haynie's Demand for Public Records, the County was obligated to determine whether the records exist, "enumerate or describe the records so discovered, identify exemptions applying to any enumerated or described records, and disclose the remaining records." In this court, the County does not dispute its obligation to determine whether requested records exist and whether exemptions apply to those records nor does it deny its duty to disclose nonexempt records that it has found. The County objects only to the ruling of the Court of Appeal that it should have provided Haynie with an enumeration or description of all responsive records, regardless of whether those records were exempt from disclosure. [26 Cal.4th at 1072.]

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 5
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

[...]

Haynie suggests that such a requirement may be inferred from *section 6255, subdivision (a)*, which provides: "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." [...] When an agency, in compliance with *section 6255*, articulates one or more of these exemptions, it will necessarily reveal the general nature of the documents withheld. For example, an agency that invokes *subdivision (f) of section 6254* has revealed that the withheld documents are library circulation records. Here, the County's invocation of *section 6254(f)* revealed that the withheld documents were records of an investigation. What *section 6255* does not require, however, is for the agency to go further and describe each of the documents falling within the statutory exemption. The Legislature, which has carefully detailed the components of the agency's denial of a CPRA request, even to the point of requiring the agency to "set forth the names and titles or positions of each person responsible for the denial" (§ 6253, *subd. (d)*), is fully capable of requiring agencies to include a log of withheld documents. Given this detailed scheme, it would be inappropriate for us to enlarge the agency's burden under the guise of interpreting the statute. [26 Cal.4th at 1074.]

[...]

We have no doubt that an agency may elect to create such a list, with or without requiring reimbursement for its costs, but we find nothing in the act itself that mandates any action other than opening for inspection the records identified as coming within the scope of the request or providing copies thereof at the expense of the person requesting copies. Preparing an inventory of potentially responsive records is not mandated by the CPRA. [26 Cal.4th at 1075.]

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 6
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

[]

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 3, 2013
PAGE: 7
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CALIFORNIA PUBLIC RECORDS ACT

SECTION 6254. EXEMPTION OF PARTICULAR RECORDS

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

[...]

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

SECTION 6276. RECORDS OR INFORMATION NOT REQUIRED TO BE DISCLOSED

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

SECTION 6276.04. "AERONAUTICS ACT" TO "AVOCADO HANDLER TRANSACTION RECORDS"

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010), of Title 4, of Part 4 of the Code of Civil Procedure.

SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT

Date: November 19, 2012; amended December 18, 2012.

Complainant: Allen Grossman
111 30th Avenue
San Francisco, CA 94121
Facsimile: (415) 831-3721
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director
San Francisco Ethics Commission;
Mr. Steven Massey, Information Technology Officer San
Francisco Ethics Commission.

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Sections 67.21, subdivision (b), 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b) (1) (i) and (ii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the folk, ring Commission Notice;

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission.

SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT

Date: November 19, 2012

Complainant: Allen Grossman
111 30th Avenue
San Francisco, CA 94121
Facsimile: (415) 831-3721
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director
San Francisco Ethics Commission;
Mr. Steven Massey, Information Technology Officer
San Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42; subdivision (b) (1) (i) and (ii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

"(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

October 12, 2012: Mr. Massey responded, on behalf of Mr. St. Croix, by email (Document #2) stating, in part:

"We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

"A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030." [Emphasts Added.]

October 21, 2012: Complainant sent the attached letter (Document #3) by Facsimile to Mr. Massey in which Complainant advised him that:

"There is no point in my considering whether any of these "confidentiality" protections — the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) — are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each one is and then determine whether or not I concur that one or two of those "protections" would apply.

"By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the

attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

"The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(i) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

"Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance."

November 1, 2012: Complainant sent the following email Mr. Massey (copy to Mr. St. Croix):

To: Steven.Massey@SFGOV.ORG
From: Allen Grossman <grossman356@mac.com>
Date: 11/01/2012 04:29PM
Cc: john.st.croix@sfgov.org
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it

appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

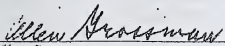
November 2, 2012 Mr. St. Croix responded by email (Document #4) as follows:

From: john.st.croix@sfgov.org
Subject: Re: October 3, 2012 Records Request
Date: November 2, 2012 3:04:50 PM PDT
To: Allen Grossman <grossman356@mac.com>
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. *You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed. [Emphasis Added.]*

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Hearing: Complainant requests a public hearing before the Sunshine Ordinance Task Force.


Allen Grossman

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Email: grossman356@mac.com
Phone: (415) 831-3720
FAX: (415) 831-3721

VIA FACSIMILE

To: Mr. John St. Croix, Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA, 94102-6053

Date: October 3, 2012

This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived; in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012
Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.

In accordance with Section 67.25(d) of the Sunshine Ordinance, please provide the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling"

#1

basis.

If the requested records are kept electronically or in PDF format, please send them in their original format by email to my above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to my above email address.

This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.

Allen Grossman
Allen Grossman

From: Steven.Massey@SFGOV.ORG
Subject: Response to records request - October 3, 2012
Date: October 12, 2012 2:57:40 PM PDT
To: Allen Grossman <grossman356@mac.com>

Mr. Grossman,

On October 3, 2012, Executive Director St. Croix received the following request from you:

"...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

You requested that the Ethics Commission send the records to your e-mail address.

We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.

Please let me know whether you would like the Commission to provide the disc or whether you will provide your own. The responsive documents to your request are available for inspection and copying.

Sincerely,

Steven Massey

#2

Information Technology Officer
CCSF Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(P) 415-252-3108
(F) 415-252-3112
Steven.Massey@sfgov.org
<http://www.sfethics.org>

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Tel: (415) 831-3720
Fax: (415) 831-3721
Email: grossman356@mac.com

October 21, 2012

BY FACSIMILE

Mr. Steven Massey
Information Technology Officer
CCSF Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: October 3, 2012 Records Request

Déar Mr. Massey:

In your October 12, 2012 Email responding to the subject Records Request you advised me:

"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030."

My Records Request was directed to Mr. St. Croix, Executive Director of the Ethics Commission. Although the complete response - that is, the copies of public records you are making available to me (including those with redactions) as described in your email and notice that the decision to withhold public records from disclosure - came from you, I can properly assume that Mr. St. Croix approved the response and that he takes full responsibility for it. If otherwise, please advise me.

So that we are looking at the specific sections of the state statutes to which you refer as the basis for withholding "other documents", I quote them in full on the Schedule attached to this letter. CPRA §6254(k) is not an exemption by itself, but incorporates state and federal law exemptions. Evidence Code §§952 and 954 create the "attorney-client privilege" and CCP §2018.30 creates two so-called "work product" doctrines, one absolute and the other conditional. Mr. St. Croix relies on these two exemptions to justify his withholding of certain unidentified public records. However, in the case of the conditional work product doctrine - §2018.30(b) - it is not clear whether it is even applicable when no litigation is involved.

There is no point in my considering whether any of these "confidentiality" protections - the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) - are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do hat would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each

#3

one is and then determine whether or not I concur that one or two of those "protections" would apply.

By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance.

§67.25 provides, in part:

"No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute..."

§67.27 provides, in part:

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority. [Emphasis added.]

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere. [Emphasis Added.]

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

Taken together these provisions require Mr. St. Croix, as the custodian of the requested records, to review each of the withheld records, provide some description of each (without necessarily disclosing any public information in it that he considers exempt) and then cite the specific statutory exemption that he claims exempts it or the redacted information from disclosure.

Before I pursue my Records Request any further, Mr. St. Croix is reminded that he cannot summarily deny my constitutionally protected right to access public records and public information with broad claims of exemptions to a group of varying types of public records contrary to what the CPRA and the Sunshine Ordinance were designed to prevent.

Very Truly Yours,

AS/ 

Allen Grossman

CPRA § 6254(k): Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following: (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Evidence Code §952: As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Evidence Code §954: Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

...The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

Code of Civil Procedure §2018.030:

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

MEMORANDUM

Date: May 28, 2013

To: Members, Sunshine Ordinance Task Force

Re: Complaint # 12056:
Grossman vs. John St. Croix, Executive Director, SF Ethics Commission

My complaint and Mr. St. Croix's response are to be heard at SOTF's June 5, 2013 regular meeting. Currently the SOTF has nine members, two short of the statutorily required eleven. Under the SOTF current bylaws, the "affirmative vote of a majority of the members of the Task Force (six votes) shall be required for the approval of all substantive matters."

Determinations by the SOTF whether a respondent custodian agency, department or City officer responding to a complaint has or has not complied with the Sunshine Ordinance are "substantive matters" requiring approval by six votes irrespective of the number of SOTF members voting.

Following a hearing on the complaint, the SOTF's practice has been to consider a motion with respect to the complaint's claims of respondent's non-compliance with the Sunshine Ordinance. That motion requires the "aye" vote of at least six members that the respondent had not complied. Thus, when less than all eleven members are present and voting, the complainant needs more than a simple majority for such a motion to pass. If all nine current members attend the June 5 meeting and vote on my complaint, a two-thirds majority – six out of nine votes – will be required for a favorable determination. If only eight members attend and vote, the percentage rises to 75%; if only seven attend and vote, it is 87.5%. As a result, this combination of the six-vote rule and the formulation of the motion stack the deck against every complainant.

However, this combination is contrary to both the Sunshine Ordinance and the CPRA. *The Sunshine Ordinance and the CPRA both definitively provide that all public records are presumptively fully disclosable and the burden is on the custodian to prove, i.e., justify, the application of a specific exemption.*

Sunshine Ordinance:

§67.21(g): "In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies."

§67.27 JUSTIFICATION OF WITHHOLDING:

"Any withholding of information shall be justified, in writing, as follows:

"(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

"(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

"(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position."

CPRA:

§6255(a): "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

Thus, the burden of proving, i.e., "justifying", the refusal to disclose the public record is on the respondent, not on the complainant to disprove any claimed "justification".

For that reason, the SOTF's practice with respect to motions involving such non-compliance with the Sunshine Ordinance should be changed. The motion must be, in effect, that the respondent has justified the application of the claimed exemption or prohibition to the public record(s) requested, not that the complainant has proven that the records are not exempt from disclosure. If the motion is put in such terms, the six-vote rule will be consistent with applicable law, not contrary to it. It will also bring some fairness back into the process.

From: john.st.croix@sfgov.org
Subject: Re: October 3, 2012 Records Request
Date: November 2, 2012 3:04:50 PM PDT
To: Allen Grossman <grossman356@mac.com>
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

-----Allen Grossman <grossman356@mac.com> wrote:-----
To: Steven.Massey@SFGOV.ORG
From: Allen Grossman <grossman356@mac.com>
Date: 11/01/2012 04:29PM
Cc: john.st.croix@sfgov.org
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

[attachment "Ltr Massey 10-21-2012.pdf" removed by John St.Croix/
ETHICS/SFGOV]

#4

Allen Grossman
111 30th Avenue
San Francisco, CA 94121-1005
Tel: (415) 831-3720
Fax: (415) 831-3721
Email: grossman356@mac.com

December 18, 2012

By Facsimile and Email

Ms. Andrea Ausberry, Administrator
Sunshine Ordinance Task Force
City Hall - Room 244
1 Dr. Carlton B. Goodlett Place San
Francisco, CA 94102-4689

RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry:

When reviewing my Complaint and my original records request I found I had to revise the "Alleged Violations" section to conform to my request. Since I wasn't sure how you would want it handled, I decided to send you a corrected first page of the Complaint with that changed section, which you can substitute for the first page. It is attached.

Please let me know if that is not how you want it handled. If acceptable, please send me a copy of yours to Mr. St. Croix and the other persons who received the original version.

Thanks,


Allen Grossman

ALLEN GROSSMAN
111 30th AVENUE
SAN FRANCISCO, CALIFORNIA 94121-1005
TELEPHONE: (415) 831-3726
FACSIMILE: (415) 831-3721
Email: grossman356@mac.com

FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry
Administrator
Sunshine Ordinance Task Force

FAX Number: (415) 554-5163

Phone Number: (415) 554-7724

Number of Pages: 3, including cover sheet

Date: December 18, 2012

From: Allen Grossman

Message: Letter + Amended Page 1 dated today re #12056.

IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 12/18/2012 09:03
NAME : SFUFC/GROSSMAN
FAX : 4158313721
TEL : 4158313720
SER.# : 681995977

DATE/TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

12/18 09:02
5545163
00:01:25
B3
DK
STANDARD

ALLEN GROSSMAN
111 30th AVENUE
SAN FRANCISCO, CALIFORNIA 94121-1005
TELEPHONE: (415) 831-3720
FACSIMILE: (415) 831-3721
Email: grossman356@mac.com

RESENDING
FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry
Administrator
Sunshine Ordinance Task Force

FAX Number: (415) 554 -5163

Phone Number: (415) 554 -7724

Number of Pages: 14, including cover sheet

Date: November 19, 2012

From: Allen Grossman

Message: Complaint against John St. Croix,
Executive Director, Ethics Commission

IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 11/19/2012 10:45
NAME : SFUC/GROSSMAN
FAX : 4158313721
TEL : 4158313720
SER.# : G0J395977

DATE, TIME
FAX NO./NAME
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11/19 10:38
5545163
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ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIEENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Via E-Mail

December 6, 2012

Andrea Ausberry, Administrator
Sunshine Ordinance Task Force
City Hall – Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry:

On November 29, 2012, the Ethics Commission received notice of Case No. 12056 (*Allen Grossman v John St. Croix, Executive Director, Ethics Commission*). In his complaint, Mr. Grossman alleged that Mr. St. Croix failed "to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b)(1)(i) and (ii)."

Background

On October 3, 2012, Mr. Grossman faxed a public records request to the Ethics Commission for the following:

"...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission... (2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

Steven Massey responded to this request on October 12, 2012. He provided 127 documents electronically; six had been partially redacted. He also informed Mr. Grossman that the Commission was "withholding other documents in their entirety,

pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030."

On October 21, 2012, Mr. Grossman faxed a letter to Mr. Massey. He stated that it was "incumbent on [Mr. St. Croix] to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine." Mr. Grossman referenced Sunshine Ordinance sections 67.24(b)(ii) and (iii), which describe specific records that are subject to disclosure, notwithstanding any exemptions otherwise provided by law. Mr. Grossman noted that if any of the withheld records fall within either of the subsections, then the records "are not exempt by these express provisions of the Sunshine Ordinance."

On November 1, 2012, Mr. Grossman sent an e-mail to Mr. Massey about his October 21, 2012 letter that "raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available...Ignoring the letter is not an appropriate response."

On November 2, 2012, I responded via e-mail. I informed Mr. Grossman that he had already received the documents responsive to his request and that the Commission is not required to create documents that do not exist.

On or about November 19, 2012, Mr. Grossman filed this complaint with the Sunshine Ordinance Task Force.

Applicable Law

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

...

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

...

Analysis

Mr. Grossman first alleges that I failed "to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b)." Mr. Grossman has misinterpreted Sunshine Ordinance sections 67.27(a) and (b). There is no requirement in those subsections that a responding department must "demonstrate [e] that each such unidentified withheld record is exempt." According to the *Good Government Guide: 2010-2011 Edition* ("GGG"), published by the Office of the City Attorney, the law does not require a responding department withholding records to create a privilege log identifying the withheld records. (See GGG, p. 86.)

Sunshine Ordinance section 67.27 requires that any withholding of information be justified, in writing, as follows: (a) a withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority. (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere...."

In its October 12, 2012 e-mail response to Mr. Grossman, staff provided the required justification of withholding of information, citing California Government Code section 6254(k); California Evidence Code sections 952 and 954; and California Code of Civil Procedure section 2018.030. This written justification was made in accordance with both Sunshine Ordinance section 67.27(a) and section 67.27(b). Mr. Grossman even italicized staff's written justification on page 2 of his complaint. As the Ethics Commission is not required to create documents that do not exist; there were no additional documents for staff to provide that were responsive to his October 3, 2012 request. Therefore, I respectfully request that the Sunshine Ordinance Task Force find no violation, as staff has provided Mr. Grossman with a written justification of withholding of records in a timely manner, in accordance with Sunshine Ordinance section 67.27(a) and (b).

Secondly, Mr. Grossman also appears to allege that I failed to disclose documents that were required to be disclosed under "Section 67.42, subdivision (b)(1)(i) and (ii)." Section 67.42 of the Sunshine Ordinance does not exist. Therefore, I will respond to this allegation under the assumption that Mr. Grossman intended to reference section 67.24(b)(1)(i) and (ii).

In his October 21, 2012 letter (which Mr. Grossman attached as "Document #3" to his complaint), Mr. Grossman stated that the October 12, 2012 "response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1)..." It is unclear what law requires that staff mention this particular provision of the

Sunshine Ordinance in its response to his October 3, 2012 records request. Sunshine Ordinance section 67.24(b)(1) identifies public information that must be disclosed. There is no requirement that a responding party specifically mention it in its response to a public records request.

In responding to all public record requests, staff thoroughly reviews the Commission's files to ensure that we identify all records that are responsive to the request. This review includes a review for any documents subject to disclosure under Sunshine Ordinance subsections 67.24(b)(1)(i) and (ii). Mr. Grossman appears to have made an assumption that documents subject to disclosure under these subsections were withheld. That is not the case.

Mr. Grossman received all responsive documents to his request that were subject to disclosure. He received these documents in the format requested and in a timely manner.

Therefore, as Mr. Grossman received all documents subject to disclosure and as staff justified the withholding of information in its October 12, 2012 e-mail response in accordance with Sunshine Ordinance 67.27, I respectfully request that the Sunshine Ordinance Task Force dismiss this matter.

Sincerely,

/s/ John St. Croix

John St. Croix
Executive Director

Cc (e-mail): Allen Grossman, Complainant

Ausberry, Andrea

From: Allen GROSSMAN [grossman356@me.com]
Sent: Monday, March 18, 2013 4:02 PM
To: sunshinechairgrant@gmail.com
Cc: SOTF; St.Croix, John
Subject: SOTF Complaint #12056

Dear Chair Grant,

This complaint was refiled on November 29, 2012. At that time, I expected it would be heard with a month or two as had been the SOTF's prior practice with the other complaints I filed over a period of four or five years.

The SOTF's practice had been to observe the requirements of Section 67.21(e) of the Sunshine Ordinance that requires the SOTF to inform the complainant of its determination "no later than 45 days" from when the petition (complaint) is received. That section is quoted below.

On February 25, I sent the SOTF Administrator an email requesting that my complaint #12056 be put on the March 6, 2013 agenda -- some 98 days after the second filing. I asked that she take that up with you. As you know, my complaint was not put on the agenda.

In any case, my wife and I are leaving for a long planned five week vacation on April 3, the date of your next regularly scheduled meeting. It does not appear there will be a special SOTF meeting before then. We will still be away on May 1, as well, when the following regular meeting is scheduled. That means that the hearing on my complaint will have to wait until the June SOTF meeting, unless a May Special Meeting is called after May 9th.

For that reason, I would appreciate your setting the hearing of my complaint for the June meeting, assuming Mr. St. Croix is available.

Thank You,

Allen Grossman

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public.



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

**Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689**

September 4, 2013 – 4:00 PM

Regular Meeting

**Members: Kitt Grant (Chair), Louise Fischer (Vice-Chair),
Richard Knee, Allyson Washburn, David Pilpel,
David Sims, Todd David, Chris Hyland, Bruce Oka**

1. CALL TO ORDER, ROLL CALL AND AGENDA CHANGES

The meeting was called to order at 4:12 p.m. Members Washburn, David and Sims were noted absent. There was a quorum. Members Sims was noted present at 4:25 p.m.

Acting Administrator Victor Young announced a request that File No. 12059 (Item 6) be continued, was received from both the Complainant and Respondent.

Member Knee, seconded by Member Hyland, moved to accept the Complainant's and Respondent's request for continuance of File No. 12059 with corrections to the title and CONTINUE to October 2, 2013.

Public Comment:
None.

The motion PASSED by the following vote:
Ayes: 6 – Knee, Pilpel, Hyland, Oka, Fischer, Grant
Absent: 3 – Washburn, Sims, David
Noes: 0

2. Election of Chair and Vice Chair - Election of Officers; per Article II, Section 3 of the By-Laws.

Vice-Chair Fischer, acting as Chair Pro Tem, requested nominations by the SOTF for the position of Chair.

Member Pilpel, seconded by Member Knee, nominated Member Grant to the position of Chair.

Public Comment:

Ray Hartz, Jr. suggested that the Task Force delay the election of officers to allow all members a chance to participate in the selections.

Member Grant was elected to the position as Chair of the SOTF by the following vote:

Ayes: 6 – Knee, Pilpel, Sims, Hyland, Fisher, Grant

Noes: 1 – Oka

Absent: 2 – Sims, David

Chair Grant assumed the position of Chair of the SOTF and requested nominations by the SOTF for the position of Vice-Chair.

Member Knee, seconded by member Pilpel, nominated Louise Fischer to the position of Vice-Chair of the SOTF.

Public Comment:

None.

Kitt Grant was elected to the position as Chair of the SOTF by the following vote:

Ayes: 7 – Knee, Pilpel, Sims, Hyland, Oka, Fisher, Grant

Absent: 2 – Sims, David

3. **File No. 12056:** The Compliance and Amendments Committee has referred File No. 12056, Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance.

Allen Grossman (Complainant) provided an overview of the complaint and further requested the Task Force to find violations. There were no speakers in support of the Complainant. John St. Croix, Executive Director, Ethics Commission (Respondent), provided an overview of the Ethics Commission defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Complainant responded to questions raised throughout the discussion and further requested the Task Force to find violations. Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Member Knee, seconded by Member Hyland, moved to find John St. Croix, Executive Director, Ethics Commission, in violation of the Sunshine Ordinance and to refer the complaint to the Board of Supervisors and the Ethics Commission for procedural actions to remedy the violations.

Public Comment:

Ray Hartz expressed support with the motion and agreed that documents should be reviewed thoroughly before being exempted; Female Speaker expressed concerns with Ethics Commission staff.

The motion PASSED by the following vote:

Ayes: 6 – Knee, Sims, Hyland, Oka, Fischer, Grant

Noes: 1 – Pilpel

Absent: 2 – Washburn, David

4. Public Comment:

Ray Hartz expressed concern that the Education, Outreach and Training committee has not yet communicated with Clerk of the Board in regards to including a 150 word summary in the Board of Supervisors minutes and file additional complaints; Allen Grossman expressed concern over the lack of members at SOTF meeting to give the public a fair hearing and requested changes to the '6 vote rule'; Dominic Maionchi express concerns over statements made before the Ethics Commission and retention of sent e-mails from city officials; Female Speaker expressed concerns with the actions of the Ethics Commission staff during her office visit; James Chaffee expressed concerns of the Sunshine bill of Rights and the conduct of members of the SOTF.

5. **File No. 12058:** The Compliance and Amendments Committee has referred File No. 12058, Dominic Maionchi against Recreation and Park for allegedly failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders.

Dominic Maionchi (Complainant) provided an overview of the complaint and further requested the Task Force to find violations. There were no speakers in support of the Complainant. Olive Gong, Recreation and Park Department, (Respondent), provided an overview of the Recreation and Park Department defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Complainant responded to questions raised throughout the discussion and further requested the Task Force to find violations. Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Member Sims, seconded by Member Pilpel, moved to continued to October 2, 2013, and to notice Phil Ginsberg, General Manager, and Ms. Ballard, Recreation and Park Department, directly of the meeting.

Public Comment:

Ray Hartz expressed that notices to departments is the same as noticing the department head.

The motion PASSED by the following vote:

Ayes: 7 – Knee, Pilpel, Sims, Hyland, Oka, Fischer, Grant

Absent: 2 – Washburn, David

6. **File No. 12059:** The Compliance and Amendments Committee has referred File No. 12059, Supreet Pabla, SEIU Local 1021 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees.

This item was continued to the October 2, 2013, meeting of the SOTF under 'Agenda Changes'

7. **File No. 13012:** Complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge.

Member Knee, seconded by Member Hyland, moved to find jurisdiction.

Public Comment:
None.

The motion PASSED without objection.

Michael Fondanova (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Margaret Sing, Assessor/Recorder's Office, (Respondent), provided an overview of the Office of the Assessor-Recorder's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent did not provide a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Pilpel, seconded by Member Knee, moved to continue the item to October 2, 2013, to allow the Assessor/Recorder's Office to perform additional research.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 7 – Knee, Pilpel, Sims, Hyland, Oka, Fischer, Grant

Absent: 2 – Washburn, David

MEETING RECESS - 6:24 p.m. to 6:33 p.m.

8. **File No. 13017:** Complaint filed by William Clark against the Office of the City Attorney for allegedly failing to provide a response to a records request regarding communications between the Arts Commission and Office of the City Attorney concerning time billing for FY 2010-2011.

Member Pilpel, seconded by Member Knee, moved to find jurisdiction.

Public Comment:

None.

The motion PASSED without objection.

William Clark (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Jack Song, City Attorney's Office, (Respondent), provided an overview of the Office of the City Attorney defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent did not provide a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Knee, seconded by Member Hyland, moved to find Jack Song, City Attorney's Office, in violation of Sunshine Ordinance Section 67.21(e) due to his absence from the meeting prior to the conclusion.

Public Comment:

Robert Clark and Female Speaker expressed concern that there was not a representative from the City Attorney's Office to answer questions.

The motion FAILED by the following vote:

Ayes: 3 – Knee, Hyland, Oka

Noes: 4 – Pilpel, Sims, Fischer, Grant

Absent: 2 – Washburn, David

Public Comment:

Robert Clark expressed various concerns; Female Speaker expressed concerns over the record keeping methods of the City Attorney Office.

Due to a lack of a motion, the Task Force FOUND NO VIOLATION.

9. **File No. 13019:** Complaint filed by Michael Petrelis against the Office of the District Attorney for allegedly violating Sunshine Ordinance section 67.29-6; failing to disclose statements regarding financial interest with the City from donors. *(attachment)*

Michael Petrelis (Complainant) did not appear for the hearing. There were no speakers in support of the Complainant. Katie Miller, District Attorney's Office, (Respondent), stated that the District Attorney had provided their argument in writing and was opposed to a continuance. There were no speakers who offered facts and evidence in support of the Respondent.

Member Sims, seconded by Member Oka, moved to continue the item to October 2, 2013.

Public Comment:

None.

The motion **FAILED** by the following vote:

Ayes: 3 – Knee, Sims, Oka

Noes: 4 – Pilpel, Hyland, Fischer, Grant

Absent: 2 – Washburn, David

Member Knee, seconded by Member Hyland, moved to table the item.

Public Comment:

None.

The motion **PASSED** by the following vote:

Ayes: 3 – Knee, Sims, Hyland, Oka

Noes: 4 – Pilpel, Fischer, Grant

Absent: 2 – Washburn, David

10. Approval of Minutes from the March 6, 2013 Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.

Public Comment: None.

The motion **PASSED** without objection.

11. Approval of Minutes from the April 3, 2013 Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.

Public Comment: None.

The motion **PASSED** without objection.

12. Approval of Minutes from the May 1, 2013 Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.

Public Comment: None.

The motion **PASSED** without objection.

13. Approval of Minutes from the June 5, 2013 Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.

Public Comment: None.

The motion PASSED without objection.

14. Approval of Minutes from the July 9, 2013 Special Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.

Public Comment: None.

The motion PASSED without objection.

15. Approval of Minutes from the August 7, 2013 Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.

Public Comment: None.

The motion PASSED without objection.

16. Report: Compliance and Amendments Committee meeting of August 20, 2013.

Member Knee provided a summary of the Compliance and Amendments Committee meeting of August 20, 2013.

Speakers: None.

17. Administrator's Report.

Report was given by Andrea Ausberry, Sunshine Ordinance Task Force Administrator.

18. Announcements, Comments, Questions, and Future Agenda Items

Member Knee stated that he will be unavailable from September 13, 2013, to September 27, 2013; expressed concern of the vacancies of seats 1 and 4 of the SOTF and request that action be taken to request the positions be filled.

Member Pilpel stated that a special meeting of the Education, Outreach and Training Committee has been scheduled for September 16, 2013, at 3:00 p.m.

19. **ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:38 p.m.

APPROVED: April 30, 2014



Victor Young
Administrator
Sunshine Ordinance Task Force



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: January 21, 2015
To: Members, Ethics Commission
From: Jesse Mainardi, Deputy Executive Director
Re: **Show Cause Hearing – Ethics Complaint 01-140107**

A scheduled Show Cause Hearing concerns a referral letter and an Order of Determination ("Order") delivered by the Sunshine Ordinance Task Force ("Task Force") to the Ethics Commission on November 21, 2013 regarding a complaint Allen Grossman filed against John St. Croix, Executive Director of the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Mr. St. Croix as the Respondent. This matter was previously continued pending the resolution of litigation, as set forth below.

Background

According to the Order, Allen Grossman filed a complaint with the Task Force on November 19, 2012 against the Respondent and alleged that the Respondent failed to fully respond to his public records request dated October 3, 2012. The Complainant alleged violations of public records laws, specifically including Sunshine Ordinance sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii). The Task Force heard the matter on June 5, 2013 and found Sunshine Ordinance section 67.21(b) and 67.24(b)(1) to be applicable to this case. The Task Force found that the requested records "are disclosable" and that Respondent violated section 67.21(b) for failure to provide the records within ten days following receipt of a request and section 67.24(b)(1) for withholding records subject to disclosure.

The Order was issued on June 24, 2013 and Respondent was ordered to release the records and appear before the Compliance and Amendments Committee on August 20, 2013. The Compliance and Amendments Committee heard the matter on August 20, 2013 and referred the matter back to the Task Force.

On September 4, 2013, the Task Force heard the matter again. According to the referral letter, the Task Force moved to find Respondent in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics Commission for violating sections 67.21(b), 67.27(a)(b), and 67.24(b)(1)(i)&(iii). On

January 27, 2014, the Board of Supervisors notified the Ethics Commission that it had closed this matter after taking no action.

On January 8, 2014, Respondent requested a continuance as the referral alleged violations of the Sunshine Ordinance that were also before the Court of Appeal of the State of California, First Appellate District (appeal from the Superior Court of California, Case # CPF-13-513221), in litigation originally initiated by the Complainant. Chairperson Hayon granted the request for a continuance on January 10, 2014. The Court of Appeal issued its decision on the matter on July 28, 2014 in favor of the Respondent, and the Supreme Court of California denied Complainant's Petition for Review on November 12, 2014. Due to notice requirements and the cancellation of the Ethics Commission's regular meeting in December 2014, the January 2015 regular meeting of the Ethics Commission is the first opportunity following the Supreme Court's denial to schedule this hearing.

Hearing Procedures and Scheduling

This matter will be heard under Chapter Two of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). This matter is scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, January 26, 2015**, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (See Regulations, Chapter Two, § II.B.) The Commission is required to deliberate on this matter in public and public comment will be allowed at the hearing. (See Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding must be supported by findings of fact and conclusions of law and must be based on the entire record of the proceedings. (See Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter Four, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. Here, neither party has requested a continuance.

The Respondent and the Complainant may speak on his or her own behalf at the hearing, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence do not apply to the hearing.

Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Any documents provided must be provided to the opposing party and shall be

delivered to the Commission no later than five business days prior to the scheduled hearing. Here, Respondent submitted documents to the Commission on January 14, 2015; Complainant submitted documents to the Commission on January 16, 2015.

Copies of all of the documents received from the Task Force regarding this matter and both parties' written submissions have been attached to this memorandum; a copy of the Regulations is also attached.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: December 1, 2014
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director
Re: Potential Amendments to the Campaign Finance Reform Ordinance

Introduction

This memorandum provides background with respect to certain amendments to the City's Campaign Finance Reform Ordinance ("CFRO") which staff intends to present at the Ethics Commission's meeting *in January*. With this memorandum, staff hopes to familiarize the Ethics Commission with certain complex issues prior to the presentation of the proposed legislative language and accompanying memorandum.

The proposed amendments will generally be limited to three discrete areas:

- (1) Contribution limits struck down, or likely to be struck down, by the courts;
- (2) Certain reporting requirements for individuals, businesses, and non-candidate committees engaged in campaign activity ("third-party disclosures"); and
- (3) Disclaimer requirements for campaign communications.

The proposed amendments will be offered in order to bring CFRO up-to-date with various legal developments, to simplify certain of CFRO's needlessly complicated reporting requirements, and to otherwise improve CFRO.

Amendments approved by four members of the Ethics Commission will be forwarded to the Board of Supervisors for consideration. The Board of Supervisors may not consider the amendments until thirty days after approval by the Commission. Amendments will become law only if they are approved by at least two-thirds of the members of the Board. (Camp. & Govt. Conduct Code § 1.103.)¹ In this regard, it is staff's intent that, if enacted, the proposed changes will be in effect for the November 2015 election.

¹ Unless otherwise stated, all statutory references are to the Campaign and Governmental Conduct Code.

Summary of Issues to be Addressed by Amendments

1. Repeal of Two Contribution Limitations.

The first set of amendments concerns two CFRO provisions limiting contributions in City elections. The first provision is Section 1.114(a)(2), which imposes an aggregate limit on contributions to City candidates in a given City election. The United States Supreme Court recently struck down as unconstitutional a similar federal law limiting how much an individual could contribute to federal candidates, parties and PACs in a two-year election cycle. (*McCutcheon v. Federal Election Commission*, 752 U.S. ___, No. 12-536.) Thus, at its meeting on May 28, 2014, the Ethics Commission resolved not to enforce Section 1.114(a)(2).

The second provision at issue is Section 1.114(c), which imposes limits on contributions to political committees not controlled by a City candidate or officeholder. On September 20, 2007, Judge Jeffrey White of the United States District Court for the Northern District of California enjoined enforcement of this section and, in accordance with the District Court's order, the City currently is not enforcing the contribution limits set forth in that section.

Given the above, staff will propose the repeal of Sections 1.114(a)(2) and 1.114(c).²

2. Third-Party Disclosure Requirements.

a. Background.

The second set of amendments concerns reporting requirements for third parties (i.e., non-candidates) – including political committees, individuals, corporations, trade associations, unions, etc. – engaged in campaign activity in City candidate elections. By way of background, third parties that wish to weigh in on City elections may do so in a variety of ways. Some methods may not involve the expenditure of funds (e.g., a simple endorsement) and thus do not trigger state or local reporting requirements.

However, third parties that spend money on communications intended to influence a City candidate election are generally subject to a number of state and local reporting rules designed to disclose the true funders of those communications.³ A variety of media may be used for these reportable communications (e.g., mass mailings, billboards, TV and radio ads, email, etc.), which are nevertheless generally divided into four sometimes overlapping categories under CFRO:

² Staff has held two interested persons meetings regarding the proposed amendments. However, because the contribution limits issue involves primarily legal – as opposed to policy – considerations, staff generally did not discuss these amendments at the interested persons meetings.

³ Pursuant to governing case law, a third-party can raise and spend as much as it wants on communications intended to influence a candidate election so long as those communications are not coordinated with the candidate. (*See Citizens United v. Fed. Election Comm'n* (2010) 558 U.S. 310; *Long Beach Area Chamber of Commerce* (9th Cir. 2010) 603 F.3d 684.)

Independent Expenditures:	Communications that “expressly advocate” the election or defeat of a candidate (e.g., “Vote for Candidate X” or “Don’t vote for Candidate Y”).
Electioneering Communications:	Communications that clearly identify a candidate within 90 days of an election and are distributed to 500 or more people, but do not contain express advocacy (e.g., a candidate’s name or appearance on a ballot measure ad).
Member Communications:	Communications to members, employees, or shareholders of an organizations (or their family members) expressly advocating the election or defeat of a candidate. ⁴
Persuasion Polls	Telephone surveys referencing a candidate which are made no more than 60 days before an election through at least 1,000 calls, and which meet certain other criteria.

Most campaign finance disclosure schemes – including California state law – generally only regulate independent expenditures by third parties (in addition to candidate and ballot measure activity). However, City law imposes reporting requirements on all four types of communications described above, both for informational purposes and for determining whether to lift or adjust the City’s Voluntary Expenditure Ceiling and Individual Expenditure Ceiling in a particular race.⁵ More specifically, CFRO imposes the following overlapping reporting requirements for third parties:

Communication	Threshold (\$)	Due Date	Form
Independent Expenditures – Mass Mailings	\$1,000	5 working days, or 48 hrs. if 16 days before election	SFEC Third-Party Disclosure Form (Parts 1, 2, 3 & 5) plus two copies
Electioneering Communications	\$1,000	48 hrs.	SFEC Third-Party Disclosure Form (Parts 1, 2, 3 & 6) plus a copy
“\$5,000 expenditures” – Independent Expenditures, Electioneering Communications, Member Communications	\$5,000/candidate	24 hrs.	SFEC Third-Party Disclosure Form (Parts 1, 2, 3 & 4) plus a copy

⁴ Pursuant to state law, these communications generally do not constitute reportable contributions or expenditures, but are reportable if made by a political party committee. (Cal. Govt. Code § 85312.)

⁵ When reported independent expenditures, electioneering communications, and member communications indicate that particular thresholds of spending that supports or opposes a candidate have been reached, the Commission will lift or adjust the applicable Voluntary Expenditure Ceiling and Individual Expenditure Ceiling.

Persuasion Polls	N/A	48 hrs.	SFEC Third-Party Disclosure Form (Parts 1, 2, 3 & 7) plus a copy
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Notably, the above filing requirements are *in addition to* those mandated by the state's Political Reform Act (the "Act"), California Government Code section 81000 et seq., which is incorporated into CFRO by Section 1.106. For example, the Act requires committees active in an election to file semi-annual reports on July 31 and January 31 of each year, as well as possibly *two types* of pre-election reports each due twice within the month prior to the election.

Importantly, *as of January 2013*, the Act also imposes a 24-hour reporting requirement for persons making independent expenditures of \$1,000 or more which support or oppose a City candidate during the 90 days prior to an election. Persons making such independent expenditures must file an FPPC Form 496 with the Ethics Commission. This requirement essentially duplicates certain reporting provisions under local law. Additionally, within 10 days, persons making independent expenditures must also file a Form 462 with the FPPC verifying that the independent expenditures were not coordinated with a candidate.

b. Issues to be addressed.

A review of CFRO's third-party reporting requirements reveals that they are overly complex and fairly burdensome, particularly for less sophisticated parties and particularly when considered in the context of state law requirements. Indeed, the Ethics Commission's Third Party Disclosure Form (attached) is now 11 pages long. Moreover, some of the requirements are now redundant, given state law changes that took effect in early 2013 requiring 24-hour reporting of all independent expenditures made within the 90 days prior to an election.

In this regard, staff is exploring ways to harmonize CFRO's third-party disclosure provisions with current state law, and to otherwise reduce redundancies and streamline third-party reporting, all while ensuring that important campaign information is disclosed. At present, staff believes that the best way of accomplishing this goal is to adopt an approach that might be called "*state law plus*" – i.e., rely on state law to the greatest extent possible, but supplement that law when necessary. Staff's proposed amendments will embody this approach.⁶

3. Campaign Disclaimer Requirements.

a. Background.

The third set of amendments concern "disclaimer" statements that must be included on or in campaign communications. State law requires candidate and third party communications to include "disclaimers" that indicate on the communication itself who is paying for the

⁶ Staff may also address the CFRO requirement that any San Francisco general purpose committee file a pre-election report if it makes any expenditure of \$500 or more during the pre-election reporting period, *even if such expenditures are not related to the upcoming election.* (State law has a similar requirement for even numbered years, but requires \$500 to be spent on contributions or independent expenditures.) Staff is considering exempting a committee's administrative costs from expenditures that trigger CFRO's pre-election reporting requirement.

communications (e.g., “Paid for by ...”). State law also requires ballot measure committees and independent committees formed primarily to support or oppose a candidate to include the names of the committee’s top two donors of \$50,000 or more (e.g., “Major funding by ...”). (Cal. Govt. Code §§ 84503 & 84506.) These disclaimers must appear in certain sizes and formats which depend on the sender and the medium of communication.

CFRO also imposes a number of disclaimer requirements on campaign-related communications in San Francisco. These requirements can basically be distilled as follows:

- *Campaign communications*⁷ and *electioneering communications* referencing City candidates must include a “Paid for by” disclaimer (followed by sender information) in 14-point type or, if spoken, at the same volume and speed as the rest of the communication. (Sections 1.161, 1.161.5, 1.162 & 1.163.)
- The disclaimer in *third-party mass mailings* advocating for or against City candidates must also be preceded by “Notice to Voters” and include the cost of the mailing. (Section 1.161.)
- *Persuasion polls* referencing City candidates must include a disclaimer stating “This is a paid political advertisement by [Name of person(s)],” and identifying the person making the call, if different from the sponsor, by stating “This call is conducted by [Name of person].” (Section 1.160.5.)

b. Issues to be addressed.

Based on the above summary, CFRO’s disclaimer rules may seem straightforward. However, they are problematic.

In fact, CFRO’s disclaimer requirements can be quite confusing. As an initial matter, one must consult five different sections of CFRO to find all of its disclaimer requirements. Moreover, these requirements actually do not make much sense in certain contexts. For example, how does a rule requiring a “Paid for by” disclaimer in 14 point font apply to TV and YouTube ads? Adding to the confusion are the disclaimer requirements imposed on local committees by *state law*, which can be different from CFRO’s requirements.

In light of the state’s robust disclaimer rules, staff is exploring CFRO amendments that incorporate the “*state law plus*” approach discussed above. Under this approach, the amendments will selectively augment – but not conflict with – state law to improve disclosure and to account for local conditions.⁸ This approach will also mitigate the potential for confusion and/or conflict with state law in the future should the Legislature change state disclaimer laws.

* * * * *

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⁷ Used here, the term “campaign communications” includes mass mailings, TV ads, radio ads, newspaper ads, posters, door hangers, yard signs billboards, and robo-calls advocating for or against the election of a City candidate.

⁸ Recent revisions to the City of Los Angeles’ disclaimer rules provide some guidance in this regard.



THIRD PARTY DISCLOSURE FORM REGARDING SAN FRANCISCO CANDIDATES

(S.F. Campaign and Governmental Conduct Code §§ 1.134(c), 1.152(a)(3), 1.152(b)(3), 1.161(b), 1.161.5, and 1.160.5)

I. Instructions

Use this form to report third party spending regarding candidates for the following San Francisco City elective offices: Mayor, Board of Supervisors, Board of Education, Board of the Community College District, Sheriff, District Attorney, City Attorney, Treasurer, Assessor and Public Defender. If you have any questions about this form, please contact the Ethics Commission at 415-252-3100.

II. What type of third party spending must be reported?

San Francisco Campaign and Governmental Conduct Code ("S.F. C&GC Code") sections 1.134(c), 1.152(a)(3), 1.152(b)(3), 1.161(b), 1.161.5, and 1.160.5 require persons who make any: (1) independent expenditure, (2) electioneering communication, or (3) member communication that clearly identifies a candidate for City elective office or authorizes administrators or pays for a (4) persuasion poll to file disclosure statements with the Ethics Commission. For more information, please refer to the applicable sections of the law, available on the Ethics Commission's website at www.sfetethics.org.

III. How to Complete the Third Party Disclosure Form

All filers must complete Parts 1, 2, and 3 of this form. In Part 3, check the box(es) that identify your filing.

If you are attaching additional sheets of paper, check the box at the bottom of the section (part) to which the additional sheets of paper apply and label the additional sheet(s).

Part 1

Report Number: Assign a unique identification number to each Third Party Disclosure Form that you file for an election. You may use any numbering system such as 1, 2, 3 or a, b, c, or Candidate Ava-1, Candidate Ava-2, Candidate Ava-3, Candidate Bob-1, Candidate Bob-2 and so forth. Also label each communication with the same report number given to the form that the communication accompanies.

Amendments: If you are amending a previously filed form, check the Amendment box, and enter the identification number of the report that you are amending. Describe the reason for the amendment in the space provided.

A filer who does not know the actual costs when he or she is required to file this form may provide good faith estimates, provided that the filer must amend this statement within 48 hours after he or she receives accurate information regarding the actual costs.

Part 2

Filer information: Provide filer's complete contact information.

Part 3

Type of filing: Check the box(es) that identify the reason for filing this form. A single communication may trigger filing requirements prescribed by more than one section of the law. By filing one form, checking all the boxes that apply in part 3, providing the required disclosure in other parts of this form, and providing the applicable copy (copies) of the communication, you will satisfy the various filing requirements prescribed by sections 1.134(c), 1.152(a)(3), 1.152(b)(3), 1.161(b), 1.161.5, and 1.160.5.

Part 4—S.F. C&GC Code §§ 1.134(c), 1.152(a)(3), and 1.152(b)(3): \$5,000 expenditures

Who files: Part 4 of this form must be completed by any person¹ who makes expenditures for the purpose of distributing independent expenditures, electioneering communications or member communications that clearly identify a candidate for City elective office in an aggregate amount of \$5,000 or more per candidate.

When to file: Within 24 hours of (1) reaching the initial threshold of \$5,000 and (2) each time the person makes or incurs an additional expense that in the aggregate totals \$5,000 or more per candidate.

This disclosure is required in a race for Mayor or Board of Supervisors only if the Ethics Commission has certified that at least one candidate for Mayor or one candidate for the Board of Supervisors in the same district is eligible to receive public funds. In all other races, disclosure is required only if at least one candidate has accepted the applicable voluntary expenditure ceiling and the Ethics Commission has not lifted that voluntary expenditure ceiling.

What to file: A disclosure statement (Part 4 of this form) and a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video.

The cost of a communication that supports or opposes more than one candidate or measure must be apportioned among each candidate and measure in the communication. Your records must include a calculation of how such costs were apportioned and determined.

Part 5—S.F. C&GC Code § 1.161(b): mass mailing

Who files: Any person who makes independent expenditures of \$1,000 or more for a mass mailing that supports or opposes any candidate for City elective office must complete Part 5 of this form. The filer must disclose the itemized costs associated with the mailing, including but not limited to the amounts paid for photography, design, production, printing, distribution and postage. The filer must show each separate charge or payment for each cost associated with the mailing.

When to file: Within (a) five (5) working days after the date of the mailing; or (b) 48 hours of the date of the mailing if the date of the mailing occurs within the final 16 days before the election.

What to file: A disclosure statement (Part 5 of this form) and two originals of the mass mailing.

What disclosure is required on the mass mailing?

The mass mailing must contain the following disclosure in at least 14 point font: ~

¹ A person is any individual, partnership, corporation, association, firm, proprietorship, joint venture, syndicate, business trust, company, limited liability company, committee, club or other organization or group of persons acting in concert, however organized.

Notice to Required Voters (Required by City and County of San Francisco)
This mailing is not authorized or approved by any candidate for City and County office or by any election official. It is paid for by [name and committee identification number]. [address, city, state].
Total Cost of this mailing is [amount].

Part 6—S.F. C&GC Code § 1.161.5: electioneering communication

Who files: Any person who makes payments for electioneering communications² that total \$1,000 during any calendar year.

When to file: Within 48 hours of each disclosure date.³

What to file: A disclosure statement (Part 6 of this form) and a legible copy of the electioneering communication if it is in printed form or a transcript of the electioneering communication if it is in spoken form.

What disclosure is required on the communication?

The electioneering communication must contain the following words, “paid for by ____ (insert the name of the person who paid for the communication).” This disclosure statement must be in at least 14 point type if the communication is in written form, or spoken at the same volume and speed as the rest of the communication and appropriately conveyed for the hearing impaired if it is in spoken form.

Part 7—S.F. C&GC Code § 1.160.5: persuasion poll

Who files: Any person who authorizes, administers or makes payment for a persuasion poll⁴ must file this itemized statement with the San Francisco Ethics Commission within 48 hours of each disclosure date, unless the person is aware that another person authorizing, administering or making payment for the same persuasion poll has filed a form under section 1.160.5.

² An electioneering communication is any communication (such as any broadcast, cable, satellite, radio, internet, or telephone communication, and any mailing, flyer, doorhanger, pamphlet, brochure, card, sign, billboard, facsimile, or printed advertisement) that: refers to a clearly identified candidate for City elective office or a City elective officer who is the subject of a recall election; and is distributed 90 days prior to an election for the City elective office sought by the candidate or a recall election regarding the City elective officer to 500 or more individuals.

³ “Disclosure date” means (A) the first date during any calendar year when an electioneering communication is distributed after a person has made payments aggregating \$1,000 for electioneering communications; and (B) after the person has met the threshold under (A), any date during the same calendar year when an electioneering communication is distributed, if that same person made any payments for such electioneering communication.

⁴ A “persuasion poll” is any telephone survey, or series of telephone surveys that are substantially similar or identical, that refers to a clearly identified candidate for City elective office or City elective officer, other than in a basic preference question, and that includes:

1. At least one call made within 60 days prior to an election for the City elective office sought by the candidate named in the survey or prior to a recall election regarding the City elective officer named in the survey; and
2. At least 1,000 completed calls, such as person-to-person discussions following the survey script; and

For which at least two of the following are true:

- Each phone conversation takes less than four minutes on average to complete, excluding any sponsorship identification.
- The survey includes fewer than three demographic inquiries regarding factors such as age, educational level, or marital status.
- The persons conducting the survey do not collect or tabulate survey results for all the phone conversations.
- The survey includes an untrue statement about the candidate or officer described in the persuasion poll.
- The survey is designed or intentionally conducted in a manner calculated to influence the vote of the call recipient.

When to file: Within 48 hours of the date of each of the following: (1) the date that a written formal agreement regarding the persuasion poll is made between the person making the calls and the poll sponsor(s) or the sponsor(s)' agent; (2) the date of the 1000th call in the poll; and (3) the date of each 1000th additional call in the poll.

What to file: A disclosure statement (Part 7 of this form) and a copy of the script used in conducting the persuasion poll, and a copy of every question asked in the survey and every statement made to respondents in the survey.

What disclosure is required for the persuasion poll?

Any caller conducting a persuasion poll must, at the beginning of each call, (1) identify the person(s) making payments for or authorizing the call by stating "This is a paid political advertisement by [Name of person(s)];" and (2) identify the person making the call, if different from the sponsor, by stating "This call is conducted by [Name of person]." These disclosures must be spoken at the same volume and speed as the rest of the communication so as to be clearly audible by the call recipient and otherwise appropriately conveyed for the hearing impaired. These disclosures must be repeated upon the request of the call recipient.

IV. How do you determine the filing deadline if you meet the filing obligations of more than one of the sections described above?

For any expenditure, a person may be required to file reports under more than one section of the law. This form allows you to disclose various third-party spending through one form. While most of these filing obligations require you to report spending within 24 hours of making the expenditure, some of these requirements prescribe a longer time-frame to file your reports. If you are required to report expenditures under multiple requirements with differing filing deadlines, you must submit this form by the earliest deadline applicable in order for your filing to be considered timely.

V. May you fax or email the Third Party Disclosure Form to the Ethics Commission?

You may file the Third Party Disclosure Form by facsimile, email, postal mail, or in-person delivery (keep in mind that most of the above-referenced rules require 24-hour notification). You must attach a clear and legible copy of the communication.

While most of the above-referenced rules require a person to file one copy of the communication, section 1.161(b) regarding mass mailings requires two originals of the mass mailing.

Example: A filer pays for an electioneering communication for a candidate for the Board of Supervisors and meets the filing thresholds of Parts 4 and 6 of this form. Parts 4 and 6 each require the filer to provide a legible copy of the communication. The filer must complete both Parts 4 and 6, but needs only to provide only one copy of the communication.

San Francisco Ethics Commission
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 San Francisco, CA 94102
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 Fax: (415) 252-3112
 Email: ethics.commission@sfgov.org
 Web: www.sfetethics.org



For SFEC use

THIRD PARTY DISCLOSURE FORM REGARDING SAN FRANCISCO CANDIDATES
 (S.F. Campaign and Governmental Conduct Code §§ 1.134(c), 1.152(a)(3), 1.152(b)(3),
 1.161(b), 1.161.5, and 1.160.5)

Part 1. Report Information

Date of this filing	Enter date of election
No. of pages (do not count pages with instructions)	
Report Number (Assign a unique identification number to each original filing. Label attached communication with same number.)	
<input type="checkbox"/> Amendment to Report Number (list report number below and explain reason for amendment in next row)	
Reason for amendment:	

Part 2. Filer Information

Name of Filer (if committee, enter committee name)	FPPC I.D. Number (if applicable)
Filer telephone number ()	
Filer street address, city, state and zip code	
Signature	
Name of signatory	Date signed

Part 3. Type of Filing (check all boxes that apply)

- ☐ Part 4---Section 1.134(c), 1.152(a)(3), or 1.152(b)(3) filing (\$5,000 expenditures)
☐ Part 5---Section 1.161(b) filing (mass mailing)
☐ Part 6---Section 1.161.5 filing (electioneering communication)
☐ Part 7---Section 1.160.5 filing (persuasion poll)

Part 4. Report of Expenditures of \$5,000 or More Relating to a Candidate

In elections for City elective office other than Mayor or the Board of Supervisors, this part of the form is required only if at least one candidate for the City elective office has accepted the applicable voluntary expenditure ceiling and the Ethics Commission has not lifted the voluntary expenditure ceiling. In elections for Mayor or the Board of Supervisors, this form is required when the Ethics Commission has certified at least one candidate in the race as eligible to receive public funds.

a. Specify the race(s), including district number, in which cumulative expenditures of \$5,000 or more per candidate were made: _____

b. In the table below, provide information about all expenditures that aggregate to \$5,000 or more per candidate for City elective office.⁵

Candidate(s) identified in the communication	Type of Expenditure(s), i.e., independent expenditure, electioneering communication, or member communication	Indicate whether communication is intended to (1) support; or (2) oppose the candidate; or (3) be neutral.	Date of expenditure(s) (earlier of date goods/services are received or paid)	Cost apportioned to this candidate ⁶	Total amount of expenditures made related to this candidate for the election specified ⁷	Date the communication was distributed (the date the communication was broadcasted, mailed, disseminated, or passed out)

c. Attach a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video. Remember to label your communication so that it matches the Report Number that you assign to this form.

d. Please check this box if you are attaching additional pages and indicate the number of pages attached: ☐ No. of additional pages: []

⁵ "Expenditures" include independent expenditures, electioneering communications and member communications. You must include expenses that have been incurred but not yet paid. Do not count contributions made directly to candidates.

⁶ In this column, include all unreported expenditures relating to this candidate. For example, if you previously incurred \$2,000 in independent expenditures for Candidate Dhillon that were not reported because you had not met the \$5,000 threshold at that time, and then you incurred another \$4,000 for Candidate Dhillon, you must report in this column that you spent a cumulative amount of \$6,000 for this candidate. In this example, you would attach a copy of the communication(s) relating to the \$2,000 and \$6,000 expenditures.

⁷ In this column, report the sum of all previously reported amounts and the amount currently being reported.

Part 5. Itemized Disclosure Statement for Mass Mailings

a. Describe the mass mailing by completing the table below.

Title or description of mass mailing:	
Date of mass mailing:	
Total cost of mass mailing:	
Number of pieces mailed:	

b. Please provide the following information in the table below:

- The name, address (including street, city, and zip code) of each vendor
- The services or items provided by the vendor
- The cost of each service or item provided by the vendor

Name of Vendor	Service or Item Provided	Cost of Each Service or Item
	<input type="checkbox"/> photography <input type="checkbox"/> design (which may include graphics, text, layout, proofs) <input type="checkbox"/> production (which may include paper, printing, photocopying) <input type="checkbox"/> distribution (which may include mail house, folding, stuffing, sorting, labels, mailing lists) <input type="checkbox"/> postage (which may include US postage, other delivery, messenger, courier) <input type="checkbox"/> other _____	<input type="checkbox"/> Check box if this is an estimated cost
	<input type="checkbox"/> photography <input type="checkbox"/> design (which may include graphics, text, layout, proofs) <input type="checkbox"/> production (which may include paper, printing, photocopying) <input type="checkbox"/> distribution (which may include mail house, folding, stuffing, sorting, labels, mailing lists) <input type="checkbox"/> postage (which may include US postage, other delivery, messenger, courier) <input type="checkbox"/> other _____	<input type="checkbox"/> Check box if this is an estimated cost
	<input type="checkbox"/> photography <input type="checkbox"/> design (which may include graphics, text, layout, proofs) <input type="checkbox"/> production (which may include paper, printing, photocopying) <input type="checkbox"/> distribution (which may include mail house, folding, stuffing, sorting, labels, mailing lists) <input type="checkbox"/> postage (which may include US postage, other delivery, messenger, courier) <input type="checkbox"/> other _____	<input type="checkbox"/> Check box if this is an estimated cost

c. Attach two of the original pieces of the mass mailing. Remember to label your mass mailing so that it matches the Report Number that you assign to this form.

d. Please check this box if you are attaching additional pages and indicate the number of pages attached: ☐ No. of additional pages: []

Part 6. Itemized Disclosure Statement for Electioneering Communications

a. Complete Schedule A below.

Schedule A: Information about electioneering communication		
1.	Name of any individual exercising/ sharing direction and control over filer:	
2.	Total amount of payments made for electioneering communications during calendar year:	
3.	Total amount of payments made that are itemized on this statement (please provide information regarding these payments on Schedule B):	
4.	Total amount of all payments received to date for electioneering communications during the calendar year:	
5.	Total amount of payments received that are itemized on this statement (please provide information regarding these previously unreported payments of \$100 or more on Schedule C):	
6.	Name and Office of Candidate(s) or City Elective Officer identified in this Electioneering Communication:	
7.	Date Electioneering Communication was distributed:	

b. Complete Schedule B below to provide information regarding payment(s) disclosed in **Item 3** above (Schedule A), which have not been reported on a previously filed itemized disclosure statement.

Schedule B: Information regarding payments made for electioneering communications (from line 3 on Schedule A)				
	(i)	(ii)	(iii)	(v)
	Date Payment Made	Full Name & Street Address of Person to Whom Payment was Made	Amount of Payment	Description of Consideration for Which Payment was Made
a.			<input type="checkbox"/> Check box if this is an estimated cost	
b.			<input type="checkbox"/> Check box if this is an estimated cost	
c.			<input type="checkbox"/> Check box if this is an estimated cost	

Check box if additional pages of Schedule B are used: ☐

**Part 6. Itemized Disclosure Statement for Electioneering Communications
(continued)**

c. Complete Schedule C below to provide information regarding payment(s) disclosed in **Item 5** above (Schedule A), which have not been reported on a previously filed itemized disclosure statement.

Schedule C: Information regarding previously unreported payments of \$100 or more that the filer received from another person were used for making the electioneering communications (from line 5 on Schedule A)

	(i)	(ii)	(iii)	(iv)	(v)
	Date Payment Received	Amount/Value of Payment Received	Full Name, Street Address, City, State and Zip Code of Person From Whom Filer Received Payment(s)	Occupation and Employer of Person Identified in Column (iii), or, if the Person is Self-Employed, the Name of the Person's Business	Cumulative Amount of Payments Received From Person Identified in Column (iii) During Calendar Year
a.					
b.					
c.					

Check box if additional pages of Schedule C are used: ☐

d. Attach a legible copy, or a transcript if in spoken form, of the electioneering communication. Remember to label your communication so that it matches the Report Number that you assign to this form.

Part 7. Itemized Disclosure Statement for Persuasion Polls

a. Provide information regarding each person who authorized, administered or made payments for the persuasion poll

Full Name	Street Address	City	State	Zip Code	Email	Telephone Number

b. Provide information regarding each person who shared or exercised direction and control over the person(s) named in (a) above

Name of Person Making Payment	Street Address	City	State	Zip Code	Occupation and Employer (If self employed, name of business.)	Date Payment Received	Amount of Payment	Cumulative Amount Received

c. Provide information regarding person(s) who made payments of \$100 or more to the person(s) named in (a) or (b) above

Full Name	Street Address	City	State	Zip Code	Email	Telephone Number

d. Provide information about the Persuasion Poll

Disclosure date: ____ / ____ / ____

Please check below to indicate the applicable type of disclosure date.

- ☐ The date that a written formal agreement regarding the persuasion poll was made between the person making the calls and the poll's sponsor or the sponsor's agent
- ☐ The date of the 1,000th call in the persuasion poll
- ☐ The date of each 1,000th additional call in the persuasion poll

The dates during which the persuasion poll was conducted: ____ / ____ / ____ to ____ / ____ / ____

The persuasion poll was conducted in relation to the:

- ☐ City wide election of _____ or
Name of Office
- ☐ District _____ election for member of the Board of Supervisors
District #



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: January 16, 2015

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director

Re: Proposed Amendments to the Campaign Finance Reform Ordinance

Proposed Commission Action and Staff Recommendation

Staff recommends that the Commission approve the amendments to the City's Campaign Finance Reform Ordinance ("CFRO"), found at San Francisco Campaign and Governmental Conduct Code section 1.100 et seq., which are set forth below.

Background and Reasons for Proposed Legislative Action

This memorandum summarizes the legislative amendments proposed by staff to update, streamline, and otherwise improve CFRO. The proposed amendments are generally limited to three discrete areas:

- (1) Contribution limits struck down, or likely to be struck down, by the courts;
- (2) Certain reporting requirements for individuals, businesses, and non-candidate committees engaged in campaign activity ("third-party disclosures"); and
- (3) Disclaimer requirements for campaign communications.

The proposed amendments will bring CFRO up-to-date with recent legal developments, particularly state law changes that took effect in early 2013 requiring 24-hour reporting of all independent expenditures made within the 90 days prior to an election. The amendments are also offered to simplify and improve CFRO's reporting and disclaimer requirements.¹

Amendments approved by four members of the Ethics Commission will be forwarded to the Board of Supervisors for consideration. The Board of Supervisors may not consider the amendments until thirty days after approval by the Commission.

¹See generally Cass R. Sunstein, *Simpler: The Future of Government* (2014) (explaining benefits of assessing and simplifying regulations through retrospective "look backs").

Amendments will become law only if they are approved by at least two-thirds of the members of the Board. (Camp. & Govt. Conduct Code section 1.103.)² In this regard, it is staff's intent that, if enacted, the proposed changes will be in effect for the November 2015 election.

A discussion of the main changes for each of the three categories of amendments follows, and includes both an explanation of, and a justification for, the proposed changes. Also, a copy of all proposed amendments is attached as Appendix A. The relevant page and line numbers on the attachment are specified for easy reference to the actual statutory language.

Finally, the proposed amendments were informed by public input provided at two interested person meetings and through communications by staff directly with members of the public and the regulated community. A summary of the comments at the two interested person meetings is attached as Appendix B as the result of a request of an attendee at the second meeting. The summary includes staff's assessments of these comments.

Legislative Proposals

1. Repeal of Two Contribution Limitations.

The first set of amendments concerns two CFRO provisions limiting contributions in City elections. Staff proposes the repeal of these provisions given recent case law.

The first provision is Section 1.114(a)(2), which imposes an aggregate limit on contributions to City candidates in a given City election.³ In *McCutcheon v. Federal Election Commission*, 572 U.S. __, No. 12-536 (S.Ct. Apr. 2, 2014), the United States Supreme Court struck down as unconstitutional a similar federal law limiting how much an individual could contribute to federal candidates, parties and PACs in a two-year election cycle.

At its meeting on May 28, 2014, the Commission adopted a resolution stating that it will not enforce the aggregate limit in Section 1.114(a)(2) against contributors in City elections given the *McCutcheon* decision. The Commission also directed the staff to include a provision repealing Section 1.114(a)(2) in a planned future package of CFRO amendments.

The second provision at issue is Section 1.114(c), which imposes limits on contributions to certain committees not controlled by a City candidate or officeholder.⁴ On September 20, 2007, Judge Jeffrey White of the United States District Court for the Northern District of

² Unless otherwise stated, all future statutory references are to the Campaign and Governmental Conduct Code.

³ Section 1.114(a)(2) provides that "[n]o person shall make any contribution which will cause the total amount contributed by such person to all candidate committees in an election to exceed \$500 multiplied by the number of city elective offices to be voted on at that election."

⁴ Section 1.114(c) provides as follows: "(1) Per Committee Limit. No person shall make, and no committee treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person to the committee to exceed \$500 per calendar year.

(2) Overall Limit. No person shall make, and no committee treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person to all committees to exceed \$3,000 per calendar year.

(3) Definitions. For purposes of this Subsection, "committee" shall mean any committee making expenditures to support or oppose a candidate, but shall not include candidate committees."

California enjoined enforcement of this section and, in accordance with the District Court's order, the City currently is not enforcing the contribution limits set forth in that section.

Since the District Court's ruling, additional federal case law has called Section 1.114(c)'s limits into question. Both the Ninth Circuit and the D.C. Circuit Court of Appeals have ruled that limits on contributions to independent PACs violate the First Amendment because the government has no anti-corruption interest in limiting such contributions. (*See Long Beach Area Chamber of Commerce v. City of Long Beach* (9th Cir. 2010) 603 F.3d 684, 699; *Speechnow.org v. Fed. Election Comm'n* (D.C. Cir. 2010) 599 F.3d 686, 689.)

Given the case law described above, staff recommends the Commission approve the repeal of CFRO Sections 1.114(a)(2) and 1.114(c).

See page 10, line 1 through page 11, line 2 of the attached draft amendments.

Decision Point 1: Shall the Commission approve the proposed repeal of CFRO Sections 1.114(a)(2) and 1.114(c), as set forth above?

2. Consolidating, Streamlining, and Enhancing Third-Party Disclosure.

a. Background for Third-Party Disclosure Requirements.

The second set of amendments concerns reporting requirements for third parties (i.e., non-candidates) – including political committees, individuals, corporations, trade associations, unions, etc. – engaged in campaign activity in City candidate elections. By way of background, third parties that wish to weigh in on City elections may do so in a variety of ways. Some methods may not involve the expenditure of funds (e.g., a simple endorsement) and thus do not trigger state or local reporting requirements.

However, third parties that spend money on communications intended to influence a City candidate election are generally subject to a number of state and local reporting rules designed to disclose the true funders of those communications.⁵ A variety of media may be used for these reportable communications (e.g., mass mailings, billboards, TV and radio ads, email, etc.), which are nevertheless generally divided into four sometimes overlapping categories under CFRO:

Independent Expenditures: Communications that “expressly advocate” the election or defeat of a candidate (e.g., “Vote for Candidate X” or “Don’t vote for Candidate Y”).

Electioneering Communications: Communications that clearly identify a candidate within 90 days of an election and are distributed to 500 or more people, but do not contain express advocacy (e.g., a candidate’s name or appearance on a ballot measure ad).

⁵ Pursuant to governing case law, a third-party can raise and spend as much as it wants on communications intended to influence a candidate election so long as those communications are not coordinated with the candidate. (*See Citizens United v. Fed. Election Comm'n* (2010) 558 U.S. 310; *Long Beach Area Chamber of Commerce, supra*.)

Member Communications:	Communications to members, employees, or shareholders of an organizations (or their family members) expressly advocating the election or defeat of a candidate. ⁶
Persuasion Polls	Telephone surveys referencing a candidate which are made no more than 60 days before an election through at least 1,000 calls, and which meet certain other criteria.

Most campaign finance disclosure schemes – including California state law – generally only regulate independent expenditures. However, City law imposes reporting requirements on all four types of communications. These disclosure requirements serve a number of purposes, including the three compelling governmental purposes identified by the U.S. Supreme Court: informing voters so they may evaluate candidates and ballot measures, preventing corruption and the appearance of corruption, and aiding in the enforcement of compliance with campaign finance laws. (*See Buckley v. Valeo* (1974) 424 US 1, 66-68.)

City disclosure requirements also help to determine whether to lift or adjust the City's Voluntary Expenditure Ceiling ("VEC") or Individual Expenditure Ceiling ("IEC") in a particular race, as described below. IECs are a critical mechanism in the City's public financing program. More specifically, when reported independent expenditures, electioneering communications, and member communications indicate that particular thresholds of spending that supports or opposes a candidate have been reached, the Commission will lift or adjust the IEC and provide a candidate participating in the City's public financing program with greater access to public funds.

b. Summary of Current Third-Party Disclosure Requirements.

CFRO imposes a number of reporting requirements on third parties that disseminate candidate-related communications prior to an election. These include the obligation to file disclosure reports for:

- *Mass mailings* – over 200 pieces of mail advocating for or against a candidate (Section 1.161(b));
- *Electioneering communications* – communications that clearly identify a candidate within 90 days of a City election and are distributed to 500 or more people (Section 1.161.5(b));
- *Persuasion polls* – telephone surveys referencing a candidate which are made through at least 1,000 calls, of which at least one is within 60 days of a City election, and which meet certain other criteria (Section 1.160.5); and

⁶ Pursuant to state law, these communications generally do not constitute reportable contributions or expenditures, but are reportable if made by a political party committee. (Cal. Govt. Code § 85312.)

- “\$5,000 reports” – independent expenditures, electioneering communications, and member communications for or against candidates in races where there is at least one publicly financed candidate (which is available in Board and Mayor races) or where at least one candidate has accepted a voluntary expenditure ceiling (which is available in races for all other local offices). (Sections 1.134; 1.152(a)(3), (b)(3).)⁷

Notably, the above filing requirements are *in addition to* those mandated by the state’s Political Reform Act (the “Act”), California Government Code section 81000 et seq., which is incorporated into CFRO by Section 1.106. For example, the Act requires committees active in an election to file semi-annual reports on July 31 and January 31 of each year, as well as pre-election reports due twice within the month prior to the election.

Importantly, the Act also imposes a 24-hour reporting requirement for persons making independent expenditures of \$1,000 or more which support or oppose a City candidate during the 90 days prior to an election. Persons making such independent expenditures must file an FPPC Form 496 with the Ethics Commission. Within 10 days, they must also file a Form 462 with the FPPC verifying that the independent expenditure was not coordinated with a candidate.

Finally, CFRO requires any general purpose San Francisco committee (including Major Donors and Independent Expenditure committees)⁸ to file a pre-election report if it makes any expenditure of \$500 or more during the pre-election reporting period. State law has a similar requirement, but requires \$500 to be spent on contributions or independent expenditures. Under the CFRO rule, a general purpose San Francisco committee must file a pre-election report even if it only pays \$500 in compliance costs during a pre-election period in an even year, even though such costs are not directly related to the upcoming election.

A chart summarizing the above reporting requirements is attached as Appendix C.

c. Assessment of current CFRO third-party reporting regime.

Staff has reviewed CFRO’s third-party reporting requirements in light of its experience and recent factual and legal developments in order to determine whether and how they might be changed to accomplish more efficient and effective regulation of third-party campaign activity.⁹ This review has revealed that CFRO’s third-party reporting requirements may be simplified, particularly when considered in the context of state law requirements. Indeed, the Ethics Commission’s Third Party Disclosure Form (attached as Appendix D) is now 11 pages long.

⁷ Certain communications may trigger more than one reporting requirement (e.g., mass mailing and \$5,000 reports), in which case the filer must generally comply with the requirements with the earlier filing deadline.

⁸ A Major Donor committee is an individual or entity which makes contributions totaling \$10,000 or more in a calendar year in connection with state or local elections in California. An Independent Expenditure committee is an individual or entity which makes independent expenditures totaling \$1,000 or more in a calendar year in connection with state or local elections in California. (Cal. Govt. Code § 82013(b),(c).)

⁹ “[R]etrospective analysis can help show what actually works and what does not. . . . it can promote the repeal or streamlining of less effective rules and the strengthening or expansion of those that turn out to do more good than harm.” (Sunstein, *supra*, at pg. 179.)

By way of example, a PAC sending a single mass mailer about a candidate costing \$1,000 or more must determine whether and when it must comply with two different CFRO requirements (i.e., the mass mailing and \$5,000 reports) *in addition to* the 24 hour reporting requirement (Form 496), a non-coordination verification requirement (Form 462), and two pre-election report requirements (Forms 460 and 465) under state law. Similarly, a ballot measure committee must determine whether a candidate endorsement on its mass mailer triggers an electioneering communications report or a “\$5,000 report” under CFRO, or both.

Complexity of this nature imposes a variety of *costs*. First, third-parties wishing to participate in elections incur compliance costs, either in time or expense. These costs “impose disproportionate burdens on the [less wealthy and less sophisticated] by raising prices and necessitating the services of lawyers and other professionals trained in the management of complexity.” (Peter H. Schuck, *Why Government Fails So Often (And How It Can Do Better)* (2014), pg. 290.) Second, the myriad of overlapping filings can produce confusion on the part of the members of the public who wish to access and understand these filings.¹⁰ Third, staff spends considerable time reviewing the third-party disclosure requirements to ensure consistent and accurate enforcement and advice to the public.

As to *benefits*, CFRO’s third-party reports undoubtedly provide important information to the public regarding the campaign activity of third-party filers. However, the marginal benefit of each additional requirement is reduced by the often overlapping nature of CFRO’s third-party reporting regime. Most notably, the mass mailing, persuasion poll and \$5,000 reporting requirement for independent expenditures overlap with other reporting requirements given that, as of January 1, 2013, state law has required all independent expenditures of \$1,000 and more made within 90 days of an election to be reported with the Ethics Commission within 24 hours. CFRO’s electioneering communications and \$5,000 reporting requirements also overlap.

In short, while certain reporting requirements may make sense taken individually, there are reasons to further streamline those requirements when considered in the context of the broader reporting scheme. (See Sunstein, *supra*, pg. 179.) As Asha John of Code For America’s SF Brigade has written, “instead of simply clamoring for more [campaign finance] disclosure, we should demand *intelligent and common sense disclosure*.” (Emphasis added.)¹¹

What does “intelligent and common sense disclosure” mean in this context? It means disclosure requirements that meet CFRO’s purposes in the simplest way possible. (See Schuck, *supra*, pg. 404; see also Jennifer Heerwig and Katherine Shaw, *Through a Glass, Darkly: The*

¹⁰ For example, a member of Code For America’s SF Brigade, Asha John, who has worked to produce data visualizations of local campaign finance data has expressed in a blog posting her frustrations with overlapping but different campaign finance data sets. (See Asha John, “Can Campaign Funding Disclosure Laws Be Counter Productive?” August 21, 2014, <https://medium.com/sf-campaign-finance-data-visualization/can-campaign-funding-disclosure-laws-be-counter-productive-d7bfc790f361>.)

¹¹ Certain prominent political scientists and campaign law scholars have argued for *less*, but better targeted, campaign finance disclosure in certain contexts. (See, e.g., Levitt, Justin, *Confronting the Impact of Citizens United* (September 13, 2010) *Yale Law & Policy Review*, Vol. 29, 2010; La Raja, Ray, *Campaign finance laws that make small donations public may lead to fewer people contributing and to smaller donations*, January 7, 2015, <http://blogs.lse.ac.uk/usappblog/2015/01/07/campaign-finance-laws-that-make-small-donations-public-may-lead-to-fewer-people-contributing-and-to-smaller-donations/>.)

Rhetoric and Reality of Campaign Finance Disclosure (June 18, 2014). Georgetown Law Journal, Vol. 102, p. 1443, 1475.) As stated above, those purposes are: (1) promoting the variety of governmental interests served by disclosure, including disclosure of the true funders of third-party spending, and (2) tracking third-party spending for purposes of the City's Voluntary Expenditure Ceiling and Individual Expenditure Ceiling.

The simplest way of serving these purposes is to rely on an approach that might be called "*state law plus*" – i.e., rely on state law to the greatest extent possible, but supplement that law when necessary. Here, this approach entails making a few basic fixes to remove redundancies, institute a single disclosure threshold, and simplify reporting. In sum, staff proposes the following:

- Rely on the state Form 496 for reporting independent expenditures (including mass mailers) for or against candidates.
- Remove the mass mailing, persuasion poll and \$5,000 reports disclosure requirements.
- Impose a new member communications reporting requirement.
- Standardize the reporting threshold for independent expenditures, electioneering communications, and member communications at \$1,000 per candidate.
- Require Form 496, electioneering communications reports, and member communications reports to all be filed within 24 hours during the 90 days prior to an election.
- Require the filing of copies of all reported independent expenditures, electioneering communications, and member communications.
- Exempt general purpose committees only paying administrative costs (e.g., legal and accounting fees) from the requirement to file pre-election statements.

These changes are summarized in Appendix C and are also described further below.

In short, by simplifying the third-party reporting rules, these fixes will help to "[e]nsure that all individuals and interest groups in our city have a fair opportunity to participate in elective and governmental processes." (Section 1.100(b)(2).)

d. Proposed legislative amendments for third-party disclosure requirements.

i. Amend Section 1.134. This amendment specifies that the Executive Director will determine whether a *voluntary expenditure ceiling*¹² for an elected office has been lifted by

¹² Candidates for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, the Board of Education, and the Community College Board may accept a voluntary expenditure ceiling which they are then prohibited from exceeding. The ceiling may be lifted based on candidate and third-party spending.

consulting various filed reports, including Forms 496 (for independent expenditures), electioneering communications reports, and member communications reports. Such determinations are currently made by reference to \$5,000 reports filed with the Commission; this amendment eliminates this \$5,000 report disclosure requirement.

See page 14, line 3 through page 15, line 5 of the attached draft amendments.

ii. Amend Section 1.135. Section 1.135 currently requires a San Francisco general purpose committee to file pre-election reports if it makes payments of \$500 or more in the applicable period, *regardless of whether the payments have anything to do with the upcoming election*. Thus, a payment for treasurer services performed earlier in the year or overhead costs will trigger this reporting requirement. With the amendment of Section 1.135, a San Francisco general purpose committee will still have to file pre-election reports if it makes payments of \$500 or more in the applicable period, but not if its only payments are for costs related to the establishment and administration of that committee (e.g., legal and accounting fees, etc.).

See page 15, line 6 through line 15 of the attached draft amendments.

iii. Amend Sections 1.143 and 1.152. These amendments specify that the Executive Director will determine whether *an individual expenditure ceiling*¹³ for an elected office has been lifted by consulting various filed reports, including Forms 496 (for independent expenditures), electioneering communications reports, and member communications reports. Such determinations are currently made by reference to \$5,000 reports filed with the Commission; this amendment eliminates this \$5,000 report disclosure requirement.¹⁴

See page 16, line 16 through line 21; page 19, line 7 through page 20, line 3; and page 20, line 23 through page 21, line 23 of the attached draft amendments.

iv. Delete Section 1.160.5. Section 1.160.5 currently imposes certain disclaimer and reporting rules for “persuasion polls” – i.e., telephone surveys referencing a candidate which are made through at least 1,000 calls, of which at least one is within 60 days of a City election, and which generally paint the referenced candidate in an unflattering light. The amendments delete this section as these calls are generally captured under either independent expenditure or electioneering communications reporting and disclaimer requirements. In this regard, it appears that only two surveys have ever properly triggered this reporting requirement, both of which were also reported as independent expenditures.

¹³ Qualifying candidates for Mayor and the Board of Supervisors may receive public financing for their campaigns, but their spending is subject to individual expenditure ceilings that they may not exceed. These ceilings are adjusted based on candidate and third-party spending. The purpose of flexible individual expenditure ceilings is to ensure that publicly financed candidates are not easily outspent by non-participating, competing candidates.

¹⁴ Independent expenditures and member communications made more than 90 days prior to an election (i.e., before the first week of August) will *not* be reported within 24 hours. However, independent expenditures made outside the 90-day period will be captured on a Form 465 filed with the Commission in the month prior to the election. Moreover, it is extremely unusual for such expenditures and communications to take place before the 90 day period given that most candidate election activity happens after Labor Day. In this regard, staff calculates that less than \$8,000 has been spent on third party spending outside the 90-day period since 2010 (out of a total of \$6.3 million), and \$6,707 of that amount involved funds spent on the “Run Ed Run” recruitment effort.

See page 22, line 8 through page 26, line 16 of the attached draft amendments.

v. Amend Section 1.161. Section 1.161 currently requires both candidates and third-parties to file itemized mass mailer reports within 5 business days, or within 48 hours if sent during 16 days prior to an election. The amendment eliminates this requirement for *third parties*, as their mailers are already generally disclosed within 24 hours on Forms 496, along with other independent expenditures. The amendments retain the mass mailing reporting for *candidates* but limit the number of required copies that must be filed to one

Additionally, amended Section 1.161 specifies that copies of *all* independent expenditures concerning candidates – including mass mailings, billboards, TV and radio ads, etc. – must accompany any Form 496 filed with the Ethics Commission.

Current section 1.161 also imposes disclaimer requirements, which the amendments replace and improve, but which are discussed later in this memorandum.

See page 26, line 17 through page 30, line 2 of the attached draft amendments.

vi. Delete Section 1.161.5. This section currently sets forth the electioneering communications rules, which the amendments move to Section 1.162.

See page 30, line 3 through page 36, line 19 of the attached draft amendments.

vii. Amend Section 1.162. This section currently sets forth the disclaimer rules for “campaign advertisements.” The amendments replace and improve these requirements, which are discussed later in this memorandum.

Amended Section 1.162 sets forth the disclaimer and reporting rules for electioneering communications. The disclaimer rules are discussed later in this memorandum. As for reporting rules, the amendment will require electioneering reporting only when the expenditures per candidate is \$1,000 or more. For purposes of the \$1,000 threshold, the costs of a communication that refers to more than one candidate or ballot measure will be apportioned among each candidate and measure in the communication according to the relative share of that communication dedicated to each candidate or measure.¹⁵ This amendment helps to set a uniform standard for disclosure thresholds – i.e., \$1,000 per candidate – and reduces the reporting deadline to 24 hours. It also addresses the problematic scenario of a ballot measure committee having to file an electioneering communication report simply because its mailer includes a very small reference to an endorsement by a candidate.¹⁶ Under the amendment, the

¹⁵ The entire cost of any communication referencing only one candidate will count towards the \$1,000 threshold.

¹⁶ Definitions relevant to electioneering communications are also moved to the definitions section of CFRO. (See page 3, line 15 through page 4, line 24 of the attached draft amendments.) In this regard, the definition of electioneering communication has been amended to exclude campaign communications by candidates (i.e., candidate mailers that list other candidate endorsements). This is consistent with informal Ethics Commission advice that such communications are not reportable electioneering communications. Also, in response to a suggestion by an interested party, the amendments exempt fundraising event invitations from 501(c)(3) nonprofit organizations that mention candidates (i.e., the candidate appears as the keynote speaker at the nonprofit’s

reportable information will mirror what is already required for independent expenditure reporting on a Form 496.

See page 30, line 3 through page 36, line 19 of the attached draft amendments.

viii. Amend Section 1.163. This section currently sets forth disclaimer rules for recorded telephone messages, which are basically duplicative of state law. The amendments eliminate this disclaimer rule, and replace it with new rules for reporting communications by an organization to its members (i.e., “member communications”) which are made 90 days prior to an election and which advocate for or against a City candidate. Pursuant to state law, these communications generally do not constitute reportable contributions or expenditures. However, member communications may impact expenditure ceilings, and thus tracking them is important. The new rules basically ask for the same information as is reported under the current regime (i.e., general spending information, but not donor information). The amendments impose a \$1,000 per candidate threshold and require reporting within 24 hours, like independent expenditures and electioneering communications.

See page 36, line 20 through page 38, line 10 of the attached draft amendments.

Decision Point 2: Shall the Commission approve the proposed amendments to CFRO’s reporting requirements set forth above?

3. Standardizing and Improving Disclaimer Requirements.

a. Background for campaign disclaimer rules.

The third set of amendments concern “disclaimer” statements that must be included on or in campaign communications. State law requires candidate and political committee communications to include “disclaimers” that indicate on the communication itself who is paying for the communications (e.g., “Paid for by ...”). State law also requires ballot measure committees and independent committees formed primarily to support or oppose a candidate to include the names of the committee’s top two donors of \$50,000 or more (e.g., “Major funding by ...”). (Cal. Govt. Code §§ 84503 & 84506.) These disclaimers must appear in certain sizes and formats which depend on the sender and the medium of communication.¹⁷

Disclaimers are generally useful because they “‘provid[e] the electorate with information,’ and ‘insure that the voters are fully informed’ about the person or group who is speaking.” (*Citizens United v. Fed. Election Comm’n* (2010) 558 U.S. 310, 368 [citations omitted].) They can serve as a “heuristic” device for voters by providing a “cognitive shortcut . . . [that helps] in the identification of a candidate’s [or measure’s sponsor’s] ideological leanings

fundraiser) from the definition of electioneering communications as these organizations are strictly prohibited under federal tax law from advocating for or against any candidate.

¹⁷ Thus, a typical disclaimer for a mass mailing sent pursuant to state independent expenditure rules might look like example B in Appendix E.

and ultimately, in voter decision making.” (See Heerwig and Shaw, *supra*, pp. 1471-73.)¹⁸ In short, voters can use the funder information in disclaimers to help them determine how to vote.

b. Issues with current campaign disclaimer rules.

CFRO also imposes a number of disclaimer requirements on campaign-related communications in San Francisco. These requirements can basically be distilled as follows:

- *Campaign communications*¹⁹ and *electioneering communications* referencing City candidates must include a “Paid for by” disclaimer (followed by sender information) in 14-point type or, if spoken, at the same volume and speed as the rest of the communication. (Sections 1.161, 1.161.5, 1.162 & 1.163.)
- The disclaimer in *third-party mass mailings* advocating for or against City candidates must be preceded by “Notice to Voters” and include the cost of the mailing. (Section 1.161.)²⁰
- *Persuasion polls* referencing City candidates must include a disclaimer stating “This is a paid political advertisement by [Name of person(s)],” and identifying the person making the call, if different from the sponsor, by stating “This call is conducted by [Name of person].” (Section 1.160.5.)

CFRO’s disclaimer requirements can be substantially simplified. Currently, one must consult five different sections of CFRO to find all of its disclaimer requirements. Moreover, these requirements fail to address certain contexts. In particular, CFRO requires campaign and electioneering communications to include a “Paid for by” disclaimer in 14 point type or, if spoken, at the same volume and speed as the rest of the communication. This rule makes sense for mass mailers, door hangers, and radio ads. But a 14 point type disclaimer is not appropriate for a billboard. It is also unclear how these rules apply to TV and YouTube ads.

Adding to the complexity are the disclaimer requirements imposed on local committees by *state law*, which can be different from CFRO’s requirements. (See Appendix F for a chart summarizing state rules for independent expenditures.) For example, state law requires disclaimers on billboards to measure five percent of the height of the billboard. CFRO requires that disclaimers on billboards are in 14 point font. Certainly, complying with state law will mean

¹⁸ See also Bruce E. Cain, *Democracy More or Less* (2014), pg. 48 (“Donor information can inform voter decisions about the competing interests behind various candidates and policies.”).

¹⁹ Used here, the term “campaign communications” includes mass mailings, TV ads, radio ads, newspaper ads, posters, door hangers, yard signs billboards, and robo-calls advocating for or against the election of a City candidate.

²⁰ The full required disclaimer for third-party mass mailings is: “Notice to Voters (Required by City and County of San Francisco) This mailing is not authorized or approved by any candidate for City and County office or by any election official. It is paid for by [name and committee identification number]. [address, city, state]. Total Cost of this mailing is [amount].” (See Section 1.161(b).)

complying with CFRO in this instance, but the disconnect between state law and CFRO may create compliance uncertainties and difficulties.²¹

Another discrepancy exists with respect to third-party mass mailings about a candidate. CFRO and state law each require similar, but distinct, disclaimers indicating that the committee sending the mailing is not controlled by a candidate. (Section 1.161; Cal. Govt. Code section 84506.5.) The result is that a committee must create a hybrid disclaimer to guarantee compliance with both state and local law:

State law disclaimer: “Not authorized by a candidate or committee controlled by a candidate.”

CFRO disclaimer: “This mailing is not authorized or approved by any candidate for City and County office or by any election official.”

“Hybrid” disclaimer: “This mailing is not authorized or approved by any candidate for City and County office, a committee controlled by a candidate, or by any election official.”

Finally, CFRO generally does not directly impose disclaimer requirements on political committees set up to advocate for ballot measures. However, mass mailers and other communications that include even a small reference to an endorsement by a City candidate currently fall under the 14 point font disclaimer requirements for *electioneering communications*.

In light of the state's robust disclaimer rules, the answer to the complexity described above is to adopt amendments incorporating the “*state law plus*” approach already referenced with respect to reporting. Under this approach, CFRO will selectively augment – but not conflict with – state law to improve disclosure and account for local conditions. (Recent revisions to the City of Los Angeles’ disclaimer rules, which modify state rules somewhat, provide some guidance in this regard.) This will simplify compliance and/or mitigate conflict with state law in the future should the Legislature change state disclaimer laws.²²

Staff’s proposed amendments are described below, but can basically be summarized as instructing any non-candidate – including political committees set up to advocate for ballot measures – to follow this basic rule:

Comply with the state's disclaimer law, but: (1) use 12 point font for mass mailers and smaller printed communications, (2) comply with a lower \$20,000 threshold for disclosing top donors, and (3) include a reference to the Ethics Commission's website.

²¹ Complying with state disclaimer requirements by themselves can be difficult in their own right. A former FPPC Chair recently recounted at a conference commemorating the 40th anniversary of the Political Reform Act needing three days to determine the correct disclaimer for a client.

²² As mentioned, staff believes that augmentation of state rules should be done selectively as any deviation from those rules introduces additional complexity.

Moreover, under the amendments, candidates must also continue to place disclaimers on communications not otherwise covered by state law.

In short, by simplifying and improving CFRO's disclaimer rules, these fixes will help to "[e]nsure that all individuals and interest groups in our city have a fair opportunity to participate in elective and governmental processes." (Section 1.100(b)(2).) They will also "[a]ssist voters in making informed electoral decisions." (Section 1.100(b)(8).)

c. Proposed legislative amendments for disclaimer requirements.

i. Amend Section 1.161. Disclaimer requirements for independent expenditures are currently found in Section 1.161 (mass mailers), Section 1.162 (campaign advertisements), and Section 1.163 (recorded telephone calls). The amendments replace these requirements with rules that are consolidated into one code section. More specifically, amended Section 1.161 specifies that CFRO's disclaimer requirements are the same as those imposed by state law except for the following:

- *12 point font for all disclaimers* on mass mailers, door hangers, flyers, posters, oversized buttons and bumper stickers, and print ads. This amendment provides for a larger disclaimer than state law (10 point font), but reduces the current 14 point font requirement, which can take up an inordinate amount of space on smaller mailers, flyers and door hangers. Staff believes that disclaimers are entirely discernible in 12 point font, which is the "safe harbor" size for federal disclaimers on printed communications smaller than 24 inches by 36 inches. (11 C.F.R. 1110.11(c)(2)(i).) The City of Los Angeles also requires 12 point font. (L.A. Muni. Code § 49.7.33.)²³
- *\$20,000 threshold to include top two major funders* of independent expenditure and ballot measure committees. Under state law, disclaimers for ballot measure committees and primarily formed independent expenditure committees must include the names of the committee's top two donors of \$50,000 or more. (Cal. Govt. Code §§ 84503 & 84506.) This amendment lowers the disclosure threshold to \$20,000, which staff believes is appropriate given the generally lower level of ballot measure spending at the City level.²⁴ The City of Los Angeles successfully instituted a similar reform in 2013. (L.A. Muni. Code § 49.7.33.) The amendment allows the Commission to adjust the \$20,000 threshold to reflect changes in the Consumer Price Index, but requires rounding to the nearest \$5,000.

²³ The amendments remove the "Notice to Voters" and mailer cost requirements for third-party mass mailers referenced in footnote 20. In this regard, the inclusion of a single mailer's cost in a disclaimer – isolated from other financial information – does not seem to be particularly meaningful to voters. Instead, staff instead believes that a reference to the Ethics Commission website (see below) will allow voters to glean more information about the "activities and relationships of importance to voters." (See Heerwig and Shaw, *supra*, p. 1474.)

²⁴ In San Francisco (and elsewhere), a common disclosure-defeating tactic is for contributors to make contributions of \$49,999 to a ballot measure or independent expenditure committee. While similar tactics may be used for any monetary threshold, staff believes that the lower \$20,000 threshold will provide more disclosure, particularly in the early stages of a campaign when larger contributors make their first of potentially multiple contributions.

- *Reference to the Ethics Commission website.* A disclaimer's prominent placement on a campaign communication affords an opportunity to convey information that is important to the needs and interests of the recipient. (See Heerwig and Shaw, *supra*, pg. 1475). In this regard, staff recommends that City disclaimers refer voters to the Ethics Commission website, where they can view all of a committee's financial information, as well as cutting-edge summaries and infographics prepared by staff. Leveraging the Commission's website in this modest manner will go a long way to helping voters seek out and review more comprehensive information. (See Sunstein, *supra*, p. 62 ["information that is vivid and salient" is likely to inform behavior].) The City of Los Angeles successfully instituted a similar reform in 2013. (L.A. Muni. Code § 49.7.33 [requiring disclaimer stating "additional information is available at ethics.lacity.org"].)
- *Candidate communications.* Under state law, candidates are only required to include "Paid for by" disclaimers on mass mailings (including emails) and calls of 500 or more, although FCC rules also require these disclaimers on TV and radio ads. This amendment ensures that CFRO continues to impose the "Paid for by" disclaimer requirement on other communications from candidates, including billboards, door hangers, websites, etc.

The impact of the changes outlined above on third-party mass mailers is illustrated in Appendix E.

See page 26, line 17 through page 29, line 9 as well as page 36, line 1 through page 37, line 2 of the attached draft amendments.

ii. Amend Section 1.162. The amendments replace the campaign advertisement provisions currently found in Section 1.162 with rules for electioneering communications that are currently found in Section 1.161.5. The amendments also update the disclaimer rules for electioneering communications by providing that the "Paid for by" disclaimer must appear in 12 point font on mass mailers, but otherwise must be displayed in a size and manner that complies with the disclaimer requirements for independent expenditures for or against a candidate under state law.²⁵ Moreover, the disclaimer must also include the reference to the Ethics Commission's website. Finally, the rules states that disclaimers are required only if the sender must file an electioneering communications report (i.e., \$1,000 is spent per candidate).

See page 30, line 3 through line 24 of the attached draft amendments.

iii. Amend Section 1.163. As mentioned above, the disclaimer requirement for recorded telephone calls in Section 1.163 has been deleted because it is duplicative of the state law requirement. The amendments replace it with new rules for reporting member communications made 90 days prior to an election and which advocate for or against a City candidate.

See page 36, line 20 through page 37, line 2 of the attached draft amendments.

²⁵ These rules are extensive and address most communication media. See Appendix F.

d. Civil Grand Jury recommendation regarding anonymous donors.

On June 26, 2014, the San Francisco Civil Grand Jury issued a report titled "Ethics in the City: Promise, Practice or Pretense," which analyzed the City's campaign and governmental ethics laws as well as the Ethics Commission's enforcement and administration of those laws. In Recommendation 6(b) of that report, the Civil Grand Jury suggested that the Ethics Commission:

"should propose ordinance amendments to require disclaimers in mailings, ads, door hangers and other outreach materials funded by committees whose individual donors are not identified to the satisfaction of a reasonable person which states, 'this is paid for by (insert organization name) funded by anonymous donors in this campaign cycle.'"

Professor Heather Gerken and two of her colleagues made a similar proposal for federal campaigns early last year, claiming that such a disclaimer "could help voters figure out how much trust to put in the ad." (See Heather K. Gerken, Wade Gibson and Webb Lyons, "Rerouting the Flow of 'Dark Money' Into Political Campaigns," *Washington Post*, April 3, 2014, http://www.washingtonpost.com/opinions/rerouting-the-flow-of-dark-money-into-political-campaigns/2014/04/03/1517ac6e-b906-11e3-9a05-c739f29ccb08_story.html.)

Both proposals stem from the perception that political actors are increasingly using nonprofit organizations to participate in candidate elections without disclosing the funders of their activity. This is certainly true at the federal level where at one point during the 2014 election over half of third-party advertising came from organizations that do not disclose their donors. (See Nicholas Confessore, "Secret Money Fueling a Flood of Political Ads," *New York Times*, October 10, 2014, <http://www.nytimes.com/2014/10/11/us/politics/ads-paid-for-by-secret-money-flood-the-midterm-elections.html>.)

However, staff is unaware that such activity is taking place to any considerable extent in San Francisco, particularly given that state law (unlike federal law) requires nonprofits making independent expenditures to disclose their donors in many instances.²⁶ Indeed, many nonprofits in San Francisco sponsor their own PACs which disclose contributor information. Moreover, third-parties sending communications that mention candidates without using express advocacy must already disclose donors under CFRO's electioneering communications rules, thus preventing one of the primary means for nonprofits to avoid donor disclosure. Further, the

²⁶ The threshold for such disclosure changed this past July, and it is unclear what the effect it will have, if any, on nonprofit activity in electoral politics in San Francisco. Nonprofits used to trigger reporting requirements if they made contributions or expenditures totaling \$1,000 or more twice in a five year period. Now, nonprofits making contributions or expenditures in California totaling \$50,000 in a 12 month period or \$100,000 over the course of four years will have to disclose their donors, as will nonprofits specifically soliciting \$1,000 or more in donations in a calendar year for political purposes. (See Cal. Govt. Code § 84222.) In any case, absent evidence of increased nonprofit election activity without donor disclosure, staff does not believe that the addition of another disclaimer requirement to CFRO is warranted. However, staff will continue to monitor this issue.

proposed requirement would also likely fall hardest on unsophisticated parties who may inadvertently violate the rule.²⁷

More generally, the proposed disclaimer requirement differs in kind from current requirements. In particular, this proposal does not simply help identify ideological leanings or provide information about funders and their motivations, which can serve as a “cognitive shortcut” – either positive *or* negative – for the voter. Instead, the proposed language appears to suggest that any failure to disclose donor information should impact the credibility of a campaign communication. More specifically, the proposed language implies that the sender of the communication *should have* disclosed its donors, even if not legally required to do so, and that the reader should thus be skeptical of the sender’s message. It is not clear that it is appropriate for the government to weigh in on otherwise legally compliant communications in this manner.²⁸

In short, staff questions the need for the Civil Grand Jury’s proposed disclaimer requirement, and thus has not included language to that effect in the draft amendments for the Commission’s consideration.

Decision Point 3: Shall the Commission approve the proposed amendments to CFRO’s disclaimer requirements set forth above?

4. Overall approval of the draft amendments.

The proposed amendments also include certain minor, technical changes that tighten and standardize language, or otherwise help to effectuate the other amendments described above, which have not been fully discussed in this memorandum. Staff recommends that after consideration of the decision points above, the Commission should vote to approve all the remaining changes set forth in the attached version of the draft amendments.

Decision Point 4: Shall the Commission approve all the changes set forth in the proposed amendments, subject to changes otherwise approved by the Commission at its meeting(s)?

Conclusion

The above amendments were proposed by staff to update, streamline, and otherwise improve CFRO. Staff recommends them for approval.

* * * * *

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²⁷ There are also vagueness issues associated with the “satisfaction of a reasonable person” standard proposed by the Civil Grand Jury.

²⁸ For further explanation of this problem by a prominent campaign law practitioner, see Robert Bauer, “‘Nudge’ Theory and the Gerken Disclosure Proposal,” *More Soft Money Hard Law Blog*, September 24, 2014, <http://www.moresoftmoneyhardlaw.com/2014/09/nudge-theory-gerken-disclosure-proposal/>; see also Cain, *supra*, pg. 50 [describing problems with “shaming” persons exercising their First Amendment rights].)

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[Campaign and Governmental Conduct Code – Amending Campaign Disclosure Requirements]

Ordinance amending the Campaign and Governmental Conduct Code to simplify and consolidate campaign finance disclaimer and disclosure requirements.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough-italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Board of Supervisors of the City and County of San Francisco hereby finds and determines that:

(a) The San Francisco Campaign Finance Reform Ordinance ("CFRO") was enacted in order to enhance the integrity of the election process and the competitiveness of campaigns in the City and County of San Francisco (the "City"). CFRO's specific purposes include ensuring that all individuals and interest groups in the City have a fair opportunity to participate in elective and governmental processes and assisting voters in making informed electoral decisions.

(b) Given recent case law, certain of CFRO's contribution limits have been struck down, or are likely to be struck down, by the courts. Removing the CFRO provisions containing those limits will help to ensure that CFRO is consistent with existing law.

(c) Over the years, CFRO's reporting and disclaimer requirements for persons sending election-related communications in City elections require consolidation and simplification, particularly given overlapping state law requirements covering the same activity. These

1 (ef) "Code" shall mean the San Francisco Campaign and Governmental Conduct
2 Code.

3 (fg) "Committee" shall be defined as set forth in the California Political Reform Act,
4 California Government Code section 81000, et seq.

5 (gh) "Contribution" shall be defined as set forth in the California Political Reform Act,
6 California Government Code section 81000, et seq.; provided, however, that "contribution"
7 shall include loans of any kind or nature.

8 (hi) "Controlled committee" shall be defined as set forth in the California Political
9 Reform Act, California Government Code section 81000, et seq.

10 (j) "Distributed" and "distribution" shall mean any act that permits a communication to be
11 viewed, read or heard.

12 (ik) "Election" shall mean any general, or special municipal election held in the City
13 and County of San Francisco for City elective office or for a local measure, regardless of
14 whether the election is conducted by district or Citywide.

15 (l) "Electioneering communication" shall mean any communication, including but not limited
16 to any broadcast, cable, satellite, radio, electronic, or telephone communication, and any mailing,
17 flyer, doorhanger, pamphlet, brochure, card, sign, billboard, facsimile, or printed advertisement, that:

18 (1) refers to a clearly identified candidate for City elective office or a City elective
19 officer who is the subject of a recall election; and

20 (2) is distributed within 90 days prior to an election for the City elective office sought
21 by the candidate or a recall election regarding the City elective officer to 500 or more individuals who
22 are registered to vote or eligible to register to vote in the election or recall election. There shall be a
23 rebuttable presumption that any broadcast, cable, satellite, or radio communication and any sign,
24 billboard or printed advertisement is distributed to 500 or more individuals who are eligible to vote for
25 or against the candidate clearly identified in the communication.

1 (3) The term "electioneering communication" shall not include:

2 (A) communications that constitute independent expenditures under this Chapter
3 or expenditures by a candidate committee for the candidate's election;

4 (B) communications made by a slate mailer organization if such
5 communications are required to be disclosed under the California Political Reform Act, California
6 Government Code Section 81000, et seq.;

7 (C) communications paid for by the City or any other local, State or Federal
8 government agency;

9 (D) non-recorded communications between two or more individuals in direct
10 conversation unless such communications are made by telephone and at least one of the individuals is
11 compensated for the purposes of making the telephone communication;

12 (E) communications that appear on bumper stickers, pins, stickers, hat bands,
13 badges, ribbons and other similar memorabilia;

14 (F) news stories, commentaries or editorials distributed through any newspaper,
15 radio station, television station, or other recognized news medium unless such news medium is owned
16 or controlled by any political party, political committee or candidate;

17 (G) member communications;

18 (H) communications that occur during a candidate debate or forum;

19 (I) communications made solely to promote a candidate debate or forum made
20 by or on behalf of the person sponsoring the debate or forum, provided that such communications do
21 not otherwise discuss the positions or experience of a candidate for City elective office or a City
22 elective officer who is the subject of a recall election; and

23 (J) invitations sent by an entity exempt from taxation pursuant to Title 26,
24 Section 501(c)(3) of the United States Code for its own fundraising event.

1 (jm) "Enforcement authority" shall mean the District Attorney for criminal enforcement,
2 the City Attorney for civil enforcement, and the Ethics Commission for administrative
3 enforcement. Nothing in this Chapter shall be construed as limiting the authority of any law
4 enforcement agency or prosecuting attorney to enforce the provisions of this Chapter under
5 any circumstances where such law enforcement agency or prosecuting attorney otherwise
6 has lawful authority to do so.

7 (kn) "Ethics Commission" shall mean the San Francisco Ethics Commission.

8 (lo) "Executive Director" shall mean the Executive Director of the Ethics Commission,
9 or the Executive Director's designee.

10 (mp) "General purpose committee" shall be defined as set forth in the California
11 Political Reform Act, California Government Code section 81000 et seq.

12 (nq) "Independent expenditure" shall be defined as set forth in the California Political
13 Reform Act, California Government Code section 81000 et seq. An expenditure is not
14 considered independent and shall be treated as a contribution from the person making the
15 expenditure to the candidate on whose behalf or for whose benefit the expenditure is made, if
16 the expenditure is made at the request, suggestion, or direction of, or in cooperation,
17 consultation, concert or coordination with, the candidate on whose behalf, or for whose
18 benefit, the expenditure is made.

19 (or) "Individual Expenditure Ceiling" shall mean the expenditure ceiling established for
20 each individual candidate for Mayor or the Board of Supervisors whom the Ethics Commission
21 has certified as eligible to receive public funds under this Chapter.

22 (ps) "Itemized disclosure statement" shall mean a form promulgated by the Ethics
23 Commission that provides a detailed description of the separate costs associated with a
24 communication, including but not limited to photography, design, production, printing,
25 distribution, and postage.

1 (~~q~~t) "Mass mailing" shall be defined as set forth in the California Political Reform Act,
2 California Government Code section 81000 et seq., provided that the mass mailing advocates
3 for or against one or more candidates for City elective office.

4 (~~r~~u) "Matching contribution" shall mean a contribution up to \$500, made by an
5 individual, other than the candidate, who is a resident of San Francisco. Matching
6 contributions shall not include loans, contributions received more than 18 months before the
7 date of the election, qualifying contributions or contributions made by the candidate's spouse,
8 registered domestic partner or dependent child. Matching contributions must also comply with
9 all requirements of this Chapter. Matching contributions under \$100 that are not made by
10 written instrument must be accompanied by written documentation sufficient to establish the
11 contributor's name and address. The Ethics Commission shall set forth, by regulation, the
12 types of documents sufficient to establish a contributor's name and address for the purpose of
13 this subsection.

14 (~~s~~y) "Measure" shall mean any City, San Francisco Unified School District or San
15 Francisco Community College District referendum, recall or ballot proposition, whether or not
16 it qualifies for the ballot.

17 (~~f~~w) "Member communication" shall ~~mean a communication made by an organization or its~~
18 ~~committee for the publication, dissemination or communication to the organization's members,~~
19 ~~employees or shareholders, or to the families of the organization's members, employees or~~
20 ~~shareholders by newsletter, letter, flyer, e-mail or similar written or spoken material, that supports or~~
21 ~~opposes a candidate or measure~~ be defined as set forth in the California Political Reform Act,
22 California Government Code section 81000 et seq. and its enabling regulations, provided that the
23 communication advocates for or against one or more City measures or candidates for City elective
24 office.

1 (~~xy~~) "Person" shall mean any individual, partnership, corporation, association, firm,
2 committee, club or other organization or group of persons, however organized.

3 (~~yz~~) "Qualified campaign expenditure" for candidates shall mean all of the following:

4 (1) Any expenditure made by a candidate, or by a committee controlled by the
5 candidate, for the purpose of influencing or attempting to influence the actions of the voters for
6 the election of the candidate to City elective office.

7 (2) A nonmonetary contribution provided to the candidate, officeholder or
8 committee controlled by the candidate.

9 (3) The total cost actually paid or incurred by the candidate or controlled
10 committee of the candidate for a slate mailing or other campaign literature produced or
11 authorized by more than one candidate.

12 (4) Expenses incurred, but for which payment has not yet been made.

13 (5) Expenses associated with complying with applicable laws, including but not
14 limited to the California Political Reform Act, California Government Code Section 81000, et
15 seq., and the provisions of this Chapter.

16 (6) "Qualified campaign expenditure" shall not include filing fees, expenses
17 incurred in connection with an administrative or judicial proceeding, payments for
18 administrative, civil or criminal fines, including late filing fees, costs incurred after the election
19 that do not directly affect the outcome of the election, including but not limited to utility bills,
20 expenses associated with an audit, and expenses related to preparing post-election campaign
21 finance disclosure reports as required by the California Political Reform Act, California
22 Government Code Section 81000, et seq., and the provisions of this Chapter, or for inaugural
23 activities or officeholder expenses.

24 (~~wz~~) "Qualifying contribution" shall mean a contribution of not less than \$10 and not
25 more than \$100 that is made by an individual who is a resident of San Francisco and that

1 complies with all requirements of this Chapter. Qualifying contributions shall not include
2 loans, contributions received more than 18 months before the date of the election or
3 contributions made by the candidate or the candidate's spouse, registered domestic partner or
4 dependent child. Qualifying contributions under \$100 that are not made by written instrument
5 must be accompanied by written documentation sufficient to establish the contributor's name
6 and address. The Ethics Commission shall set forth, by regulation, the types of documents
7 sufficient to establish a contributor's name and address for the purpose of this subsection.

8 (~~aa~~) "Recorded telephone message" shall mean a recorded audio message that
9 expressly supports or opposes a candidate for City elective office that is distributed by
10 telephone.

11 (bb) "Refers to a clearly identified candidate for City elective office or a City elective officer
12 who is the subject of a recall election" shall mean any communication that contains the candidate's or
13 officer's name, nickname or image or makes any other unambiguous reference to the candidate or
14 officer such as "your Supervisor" or "the incumbent."

15 (~~cc~~) "Surplus funds" shall mean funds remaining in a candidate's campaign account at
16 the time the candidate leaves City elective office, or at the end of the post-election reporting
17 period following the defeat of the candidate for City elective office, whichever occurs last, and
18 funds remaining in the campaign account of a committee primarily formed to support or
19 oppose a measure at the end of the post-election reporting period following the election at
20 which the measure appeared on the ballot.

21 (~~dd~~) "Total Opposition Spending" shall mean the sum of any expenditures made or
22 expenses incurred by any person or persons for the purpose of making independent
23 expenditures, electioneering communications or member communications in opposition to a
24 specific candidate for Mayor or the Board of Supervisors.

1 (aaa) "Total Supportive Funds" shall mean the sum of all contributions received by a
2 candidate committee supporting a candidate for Mayor or the Board of Supervisors, other than
3 any funds in the candidate's Campaign Contingency Account exceeding the candidate
4 committee's Trust Account Limit, plus the expenditures made or expenses incurred by any
5 person or persons for the purpose of making independent expenditures, electioneering
6 communications or member communications in support of that same candidate.

7 (bbb) "Trust Account Limit" shall mean the amount of funds in the Campaign
8 Contribution Trust Account of a candidate committee supporting a candidate for Mayor or the
9 Board of Supervisors whom the Ethics Commission has certified as eligible to receive public
10 funds under this Chapter such that the expenditure of this amount would cause the candidate
11 to reach, but not exceed, the candidate's Individual Expenditure Ceiling. The Trust Account
12 Limit shall be reduced as the candidate spends money and shall be increased when his or her
13 Individual Expenditure Ceiling increases.

14 (ccc) "Unexpended public funds" shall mean all funds remaining in the candidate
15 committee's account on the 30th day after the candidate controlling the committee is either
16 elected or not elected to office, regardless of the source of the funds, but shall not exceed the
17 amount of public funds provided to the candidate. Funds raised after this date are not
18 unexpended funds.

19 (ddd) "Voter" shall mean an individual registered to vote in San Francisco.

20 (eee) "Withdrawal" or "withdraw" shall mean, prior to an election, ending one's
21 candidacy or failing to qualify for an office for which a candidate has solicited or accepted
22 contributions.

23 (fff) "Written instrument" shall mean a check, credit card receipt, or record of
24 electronic transfer of funds.

25 SEC. 1.114. CONTRIBUTION LIMITS.

1 (a) LIMITS ON CONTRIBUTIONS TO CANDIDATES. No person other than a candidate
2 shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any
3 contribution which will cause the total amount contributed by such person to such candidate committee
4 in an election to exceed \$500.

5 (1) ~~Per-Candidate Limit. No person other than a candidate shall make, and no~~
6 ~~campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause~~
7 ~~the total amount contributed by such person to such candidate committee in an election to exceed \$500.~~

8 (2) ~~Overall Limit. No person shall make any contribution which will cause the total~~
9 ~~amount contributed by such person to all candidate committees in an election to exceed \$500 multiplied~~
10 ~~by the number of City elective offices to be voted on at that election.~~

11 (b) LIMITS ON CONTRIBUTIONS FROM CORPORATIONS. No corporation
12 organized pursuant to the laws of the State of California, the United States, or any other state,
13 territory, or foreign country, whether for profit or not, shall make a contribution to a candidate
14 committee, provided that nothing in this subsection shall prohibit such a corporation from
15 establishing, administering, and soliciting contributions to a separate segregated fund to be
16 utilized for political purposes by the corporation, provided that the separate segregated fund
17 complies with the requirements of Federal law including Sections 432(e) and 441b of Title 2 of
18 the United States Code and any subsequent amendments to those Sections.

19 (c) ~~LIMITS ON CONTRIBUTIONS TO COMMITTEES.~~

20 (1) ~~Per-Committee Limit. No person shall make, and no committee treasurer shall~~
21 ~~solicit or accept, any contribution which will cause the total amount contributed by such person to the~~
22 ~~committee to exceed \$500 per calendar year.~~

23 (2) ~~Overall Limit. No person shall make, and no committee treasurer shall solicit or~~
24 ~~accept, any contribution which will cause the total amount contributed by such person to all~~
25 ~~committees to exceed \$3,000 per calendar year.~~

1 (3) *Definitions. For purposes of this Subsection, "committee" shall mean any committee*
2 *making expenditures to support or oppose a candidate, but shall not include candidate committees.*

3 (4c) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

4 (1) General Rule. For purposes of the contribution limits imposed by this
5 Section and Section 1.120 the contributions of an entity whose contributions are directed and
6 controlled by any individual shall be aggregated with contributions made by that individual and
7 any other entity whose contributions are directed and controlled by the same individual.

8 (2) Multiple Entity Contributions Controlled by the Same Persons. If two or
9 more entities make contributions that are directed and controlled by a majority of the same
10 persons, the contributions of those entities shall be aggregated.

11 (3) Majority-Owned Entities. Contributions made by entities that are majority-
12 owned by any person shall be aggregated with the contributions of the majority owner and all
13 other entities majority-owned by that person, unless those entities act independently in their
14 decisions to make contributions.

15 (4) Definition. For purposes of this Section, the term "entity" means any person
16 other than an individual and "majority-owned" means a direct or indirect ownership of more
17 than 50 percent.

18 (4d) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of
19 contributions received from a contributor is \$100 or more, the committee shall not deposit any
20 contribution that causes the total amount contributed by a person to equal or exceed \$100
21 unless the committee has the following information: the contributor's full name; the
22 contributor's street address; the contributor's occupation; and the name of the contributor's
23 employer or, if the contributor is self-employed, the name of the contributor's business. A
24 committee will be deemed not to have had the required contributor information at the time the
25

1 contribution was deposited if the required contributor information is not reported on the first
2 campaign statement on which the contribution is required to be reported.

3 (f) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other
4 penalty, each committee that receives a contribution which exceeds the limits imposed by this
5 Section or which does not comply with the requirements of this Section shall pay promptly the
6 amount received or deposited in excess of the amount permitted by this Section to the City
7 and County of San Francisco and deliver the payment to the Ethics Commission for deposit in
8 the General Fund of the City and County; provided that the Ethics Commission may provide
9 for the waiver or reduction of the forfeiture.

10 (g) RECEIPT OF CONTRIBUTIONS. A contribution to a candidate committee or
11 committee making expenditures to support or oppose a candidate shall not be considered
12 received if it is not cashed, negotiated, or deposited and in addition it is returned to the donor
13 before the closing date of the campaign statement on which the contribution would otherwise
14 be reported, except that a contribution to a candidate committee or committee making
15 expenditures to support or oppose a candidate made before an election at which the
16 candidate is to be voted on but after the closing date of the last campaign statement required
17 to be filed before the election shall not be considered to be deemed received if it is not
18 cashed, negotiated or deposited and is returned to the contributor within 48 hours of receipt.
19 For all committees not addressed by this Section, the determination of when contributions are
20 considered to be received shall be made in accordance with the California Political Reform
21 Act, California Government Code Section 81000, et seq.

22 SEC. 1.134. LIFTING OF VOLUNTARY EXPENDITURE CEILINGS;
23 SUPPLEMENTAL REPORTING IN ELECTIONS FOR ASSESSOR, PUBLIC DEFENDER,
24 CITY ATTORNEY, DISTRICT ATTORNEY, TREASURER, SHERIFF, THE BOARD OF
25

1 EDUCATION OF THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT, OR THE
2 GOVERNING BOARD OF THE SAN FRANCISCO COMMUNITY COLLEGE DISTRICT.

3 This Section shall apply only if at least one candidate for the City elective office has
4 accepted the applicable voluntary expenditure ceiling, and the Ethics Commission has not
5 lifted that voluntary expenditure ceiling. This Section applies only to candidates for Assessor,
6 Public Defender, City Attorney, District Attorney, Treasurer, Sheriff, the Board of Education of
7 the San Francisco Unified School District, or the Governing Board of the San Francisco
8 Community College District.

9 (a) The voluntary expenditure ceiling shall no longer be binding on a candidate:

10 (1) If a candidate seeking election to the same City elective office, who has
11 declined to accept the voluntary expenditure ceiling, receives contributions or makes qualified
12 campaign expenditures in excess of 100 percent of the applicable voluntary expenditure
13 ceiling,

14 (2) If a person or persons make expenditures or payments, or incur expenses
15 for the purpose of making independent expenditures, electioneering communications or
16 member communications that total more than 100 percent of the applicable voluntary
17 expenditure ceiling, and those expenditures or communications clearly identify a candidate
18 seeking election to the same City elective office, or

19 (3) If a candidate seeking election to the same City elective office, who has
20 accepted the voluntary expenditure ceiling, makes qualified campaign expenditures in excess
21 of 100 percent of the voluntary expenditure ceiling.

22 (b) Any candidate committee that receives contributions, makes qualified campaign
23 expenditures, incurs expenses or has funds in its Campaign Contribution Trust Account that
24 total more than 100 percent of the applicable voluntary expenditure ceiling shall, within 24
25 hours of exceeding 100 percent of the applicable voluntary expenditure ceiling, file a

statement with the Ethics Commission, on forms to be provided by the Ethics Commission, stating that fact and any additional information required by the Ethics Commission.

~~(e) Any person other than a candidate committee who makes expenditures or payments, or incurs expenses for the purpose of distributing independent expenditures, electioneering communications or member communications that clearly identify any candidate in an amount that in the aggregate equals or exceeds \$5,000 per candidate shall, within 24 hours of reaching or exceeding this threshold, file a statement with the Ethics Commission. The statement shall include a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video, disclose the cost of each communication, and provide any additional information required by the Ethics Commission.~~

~~Thereafter, until the Ethics Commission lifts the applicable voluntary expenditure ceiling, any such person shall file a supplemental statement with the Ethics Commission each time the person makes expenditures for the purpose of distributing independent expenditures, electioneering communications or member communications that clearly identify any candidate in an amount that in the aggregate equals or exceeds an additional \$5,000 per candidate. The supplemental statements shall be filed within 24 hours of reaching or exceeding this threshold, and shall include a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video, disclose the cost of each communication, and provide any additional information required by the Ethics Commission.~~

~~(dc) Within one business day after receiving a notice indicating that the thresholds in subsection (a) have been met, the Ethics Commission shall inform every candidate in the same race that the expenditure ceiling has been lifted. The Executive Director shall promptly review statements filed pursuant to state and local law, including California Government Code section 84204 and Sections 1.161, 1.162, and 1.163 of this Chapter, to determine whether a communication supports or opposes one or more candidates.~~

1 (d) Within one business day after determining that the threshold listed in subsection (a) has
2 been met with respect to an office appearing on the ballot, the Executive Director shall inform every
3 candidate for that office that the Ethics Commission has lifted the applicable voluntary expenditure
4 ceiling. The Executive Director shall also post a notice on the Ethics Commission's website and send
5 written notice by email to any other person who has requested such notice.

6 SEC. 1.135. SUPPLEMENTAL PRE-ELECTION STATEMENTS.

7 (a) Supplemental Preelection Statements. In addition to the campaign disclosure
8 requirements imposed by the California Political Reform Act and other provisions of this
9 Chapter, all a San Francisco general purpose committees that makes contributions or
10 expenditures totaling \$500 or more during the period covered by the preelection statement, other than
11 expenditures for the establishment and administration of that committee, shall file a preelection
12 statements before any election held in the City and County of San Francisco at which a
13 candidate for City elective office or City measure is on the ballot, if the committee makes
14 contributions or expenditures totaling \$500 or more during the period covered by the preelection
15 statement.

16 (b) Time for Filing Supplemental Preelection Statements. In even-numbered years,
17 preelection statements required by this Section shall be filed pursuant to the preelection
18 statement filing schedule established by the Fair Political Practices Commission for county
19 general purpose recipient committees. In odd-numbered years, the filing schedule is as
20 follows:

21 (1) For the period ending 45 days before the election, the statement shall be
22 filed no later than 40 days before the election;

23 (2) For the period ending 17 days before the election, the statement shall be
24 filed no later than 12 days before the election.

25 (c) The Ethics Commission may require that these statements be filed electronically.

1 SEC. 1.143. ADJUSTING INDIVIDUAL EXPENDITURE CEILINGS.

2 This Section shall apply only if the Ethics Commission has certified that at least one
3 candidate for Mayor or the Board of Supervisors is eligible to receive public funds under this
4 Chapter.

5 (a) The Executive Director shall adjust the Individual Expenditure Ceiling of a
6 candidate for Mayor to an amount equal to the sum of the Total Opposition Spending against
7 that candidate and the highest level of the Total Supportive Funds of any other candidate for
8 Mayor if such amount is greater than \$1,475,000, provided that the Executive Director may
9 adjust a candidate's Individual Expenditure Ceilings only in increments of \$100,000.

10 (b) The Executive Director shall adjust the Individual Expenditure Ceiling of a
11 candidate for the Board of Supervisors to an amount equal to the sum of the Total Opposition
12 Spending against that candidate and the highest level of the Total Supportive Funds of any
13 other candidate for the same office on the Board of Supervisors if such amount is greater than
14 \$250,000, provided the Executive Director may adjust a candidate's Individual Expenditure
15 Ceiling only in increments of \$10,000.

16 (c) *No later than the second business day after a statement is filed pursuant to Section*
17 *1.152(a)(3) or (b)(3) of this Chapter, the Executive Director shall determine whether the*
18 *communication supports or opposes one or more candidates. The Executive Director shall promptly*
19 *review statements filed pursuant to state and local law, including Government Code section 84204 and*
20 *Sections 1.161, 1.162, and 1.163 of this Chapter, to determine whether a communication supports or*
21 *opposes one or more candidates.*

22 Factors the Executive Director shall use to determine whether the communication
23 supports or opposes one or more candidates include the following:

- 24 (1) whether the communication clearly identifies one or more candidates;
25 (2) the timing of the communication;

1 (3) the voters targeted by the communication;

2 (4) whether the communication identifies any candidate's position on a public
3 policy issue and urges the reader or viewer to take action, including calling the candidate to
4 support or oppose the candidate's position;

5 (5) whether the position of one or more candidates on a public policy issue has
6 been raised as distinguishing these candidates from others in the campaign, either in the
7 communication itself or in other public communications;

8 (6) whether the communication is part of an ongoing series of substantially
9 similar advocacy communications by the organization on the same issue; and

10 (7) any other factors the Executive Director deems relevant.

11 (d) Within one business day of the date that the Executive Director makes a
12 determination under Subsection (c), either the candidate(s) identified in the communication or
13 any candidate seeking the same City elective office as the candidate identified in the
14 communication may object to the Executive Director's determination. The Executive Director
15 shall respond to any objection within one business day of receiving the objection.

16 (e) Within one business day of the Executive Director's response, either the
17 candidate(s) identified in the communication or any candidate seeking the same City elective
18 office as the candidate identified in the communication may submit to the Executive Director a
19 request that the Ethics Commission review the Executive Director's determination. Within one
20 business day of receiving the request, the Executive Director shall notify each Commissioner
21 of the candidate's request.

22 If within one business day of the Executive Director's notice, two or more members of
23 the Commission inform the Executive Director that they would like to review the determination,
24 the Executive Director shall schedule a meeting of the Commission on a date that occurs
25 within one week of the Commissioners' requests. If three members of the Commission vote to

1 overrule the Executive Director's determination, the Commission shall make a final
2 determination based on the factors set forth above.

3 (f) If no candidate objects to the Executive Director's determination, if no candidate
4 requests review by the Commission of the Executive Director's determination, if a request is
5 made and two or more members of the Commission do not request to review the
6 determination, or within one week of two members of the Commission requesting to review
7 the Executive Director's determination, at least three members of the Commission do not vote
8 to overrule the Executive Director's determination, the Executive Director's determination shall
9 become final.

10 The Executive Director shall determine whether to adjust the Individual Expenditure
11 Ceilings of each candidate for Mayor or the Board of Supervisors pursuant to either
12 Subsection (a) or (b) of this Section within one business day of a final determination.

13 SEC. 1.152. SUPPLEMENTAL REPORTING IN ELECTIONS FOR BOARD OF
14 SUPERVISORS AND MAYOR.

15 (a) ELECTIONS FOR THE BOARD OF SUPERVISORS.

16 (1) In addition to the campaign disclosure requirements imposed by the
17 California Political Reform Act and other provisions of this Chapter, each candidate committee
18 supporting a candidate for the Board of Supervisors shall file a statement with the Ethics
19 Commission indicating when the committee has received contributions to be deposited into its
20 Campaign Contribution Trust Account or made expenditures that equal or exceed \$5,000
21 within 24 hours of reaching or exceeding that amount.

22 (2) In addition to the supplemental report in Subsection (a)(1) of this Section,
23 each candidate committee supporting a candidate for the Board of Supervisors shall file a
24 statement with the Ethics Commission disclosing when the committee has received
25 contributions to be deposited into its Campaign Contribution Trust Account or made

1 expenditures that in the aggregate equal or exceed \$100,000. The candidate committee shall
2 file this report within 24 hours of reaching or exceeding the threshold. Thereafter, the
3 candidate committee shall file an additional supplemental report within 24 hours of every time
4 the candidate committee receives additional contributions to be deposited into its Campaign
5 Contribution Trust Account or makes additional expenditures that in the aggregate equal or
6 exceed \$10,000.

7 ~~(3) Any person other than a candidate committee who makes expenditures for the~~
8 ~~purpose of distributing independent expenditures, electioneering communications, or member~~
9 ~~communications that clearly identify any candidate for the Board of Supervisors, and the amount of~~
10 ~~those expenditures in the aggregate equals or exceeds \$5,000 per candidate, shall, within 24 hours of~~
11 ~~reaching or exceeding this threshold, file a statement with the Ethics Commission. Such statement shall~~
12 ~~include a legible copy of the communication if it is conveyed in writing or an electronic recording if it~~
13 ~~is conveyed via audio or video, disclose the cost of each communication, and provide any additional~~
14 ~~information required by the Ethics Commission. Every person who is required to file a statement with~~
15 ~~the Ethics Commission pursuant to this Subsection shall indicate on the statement which candidate or~~
16 ~~candidates for the Board of Supervisors the independent expenditures, electioneering communications,~~
17 ~~or member communications disclosed on the statement support or oppose, or whether they are neutral.~~
18 ~~For the purposes of this Subsection, the costs of a communication that supports or opposes more than~~
19 ~~one candidate or ballot measure shall be apportioned among each candidate and measure in the~~
20 ~~communication.~~

21 ~~Thereafter, any such person shall file a supplemental statement with the Ethics~~
22 ~~Commission each time the person makes expenditures for the purpose of distributing independent~~
23 ~~expenditures, electioneering communications or member communications that clearly identify any~~
24 ~~candidate for the Board of Supervisors in an amount that in the aggregate equals or exceeds an~~
25 ~~additional \$5,000 per candidate. The supplemental statements shall be filed within 24 hours of~~

~~reaching or exceeding this threshold, and shall include a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video, disclose the cost of each communication, and provide any additional information required by the Ethics Commission.~~

(3) The Executive Director shall post the information disclosed on statements required by this subsection on the website of the Ethics Commission within two business days of the statement's filing.

(b) ELECTIONS FOR MAYOR.

(1) In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter, each candidate committee supporting a candidate for Mayor shall file a statement with the Ethics Commission indicating when the candidate committee has received contributions to be deposited into its Campaign Contribution Trust Account or made expenditures that equal or exceed \$50,000 within 24 hours of reaching or exceeding that amount.

(2) In addition to the supplemental report in Subsection (b)(1) of this Section, each candidate committee supporting a candidate for Mayor shall file a statement with the Ethics Commission disclosing when the candidate committee has received contributions to be deposited into its Campaign Contribution Trust Account or made expenditures that in the aggregate equal or exceed \$1,000,000. The candidate committee shall file this report within 24 hours of reaching or exceeding the threshold. Thereafter, the candidate committee shall file an additional supplemental report within 24 hours of every time the candidate committee receives additional contributions or makes additional expenditures that in the aggregate equal or exceed \$50,000.

~~(3) Any person other than a candidate committee who makes expenditures for the purpose of distributing independent expenditures, electioneering communications, or member communications that clearly identify any candidate for Mayor, and the amount of those expenditures in~~

1 the aggregate equals or exceeds \$5,000 per candidate, shall, within 24 hours of reaching or exceeding
2 this threshold, file a statement with the Ethics Commission. Such statement shall include a legible copy
3 of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio
4 or video, disclose the cost of each communication, and provide any additional information required by
5 the Ethics Commission. Every person who is required to file a statement with the Ethics Commission
6 pursuant to this Subsection shall indicate on the statement which candidate or candidates for Mayor
7 the independent expenditures, electioneering communications, or member communications disclosed on
8 the statement support or oppose, or whether they are neutral. For the purposes of this Subsection, the
9 costs of a communication that supports or opposes more than one candidate or ballot measure shall be
10 apportioned among each candidate and measure in the communication.

11 Thereafter, any such person shall file a supplemental statement with the Ethics
12 Commission each time the person makes expenditures for the purpose of distributing independent
13 expenditures, electioneering communications or member communications that clearly identify any
14 candidate for Mayor in an amount that in the aggregate equals or exceeds an additional \$5,000 per
15 candidate. The supplemental statements shall be filed within 24 hours of reaching or exceeding this
16 threshold, and shall include a legible copy of the communication if it is conveyed in writing or an
17 electronic recording if it is conveyed via audio or video, disclose the cost of each communication, and
18 provide any additional information required by the Ethics Commission.

19 (3) The Executive Director shall post the information disclosed on statements
20 required by this subsection on the website of the Ethics Commission within two business days
21 of the statement's filing.

22 (c) The supplemental statements required by Subsections (a)(2) and (b)(2), (a)(3), (b)(2)
23 and (b)(3) are not required until the Ethics Commission has certified that at least one
24 candidate is eligible to receive public funds under this Chapter, provided that within two
25 business days of the date that the Ethics Commission provides notice under this subsection

1 that it has certified that a candidate is eligible to receive public funds under this Chapter, any
2 report that previously would have been required under (a)(2) and (b)(2), ~~(a)(3), (b)(2) or (b)(3)~~
3 must be filed. Within two business days of certifying that at least one candidate is eligible to
4 receive public financing under this Chapter, the Ethics Commission shall post a notice on its
5 website, send out a press release and send written notice by regular or electronic mail to all
6 other candidates running for the same City elective office and to any other person who has
7 requested such notice.

8 SEC. 1.160.5. DISCLOSURE AND FILING FOR PERSUASION POLLS.

9 ~~(a) Definitions. Whenever in this Section the following words or phrases are used, they shall~~
10 ~~mean:~~

11 ~~(1) "Persuasion poll" shall mean any telephone survey, or series of telephone surveys~~
12 ~~that are substantially similar or identical, that~~

13 ~~(A) refers to a clearly identified candidate for City elective office or a City~~
14 ~~elective officer, other than in a basic preference question;~~

15 ~~(B) includes at least one call made within 60 days prior to an election for the~~
16 ~~City elective office sought by the candidate named in the survey or a recall election regarding the City~~
17 ~~elective officer named in the survey;~~

18 ~~(C) includes at least 1,000 completed calls, such as person-to-person~~
19 ~~discussions following the survey script; and~~

20 ~~(D) for which at least two of the following are true:~~

21 ~~(i) Each phone conversation in the survey takes less than four minutes on~~
22 ~~average to complete, excluding any sponsorship identification;~~

23 ~~(ii) The survey includes fewer than three demographic inquiries~~
24 ~~regarding factors such as age, educational level, or marital status, sufficient to allow for the tabulation~~
25

1 of results based on relevant subset(s) of the population consistent with standard polling industry
2 practices;

3 (iii) The persons conducting the survey do not collect or tabulate survey
4 results for all the phone conversations;

5 (iv) The survey includes an untrue statement about the candidate or
6 officer described in section (a)(1)(A); or

7 (v) The survey is designed or intentionally conducted in a manner
8 calculated to influence the vote of the respondent in the election described in Subsection (a)(1)(B).

9 (2) "Basic preference question" shall mean:

10 (A) a question which provides a respondent with a list of names of candidates
11 for City elective office without providing or implying any information regarding any candidate and
12 asks which candidate the respondent supports in a particular race, or

13 (B) a question which names a City elective officer without providing or implying
14 any information regarding the officer and asks whether the respondent supports or opposes the recall
15 of that officer.

16 (3) "Payment" shall be defined as set forth in Government Code of the State of
17 California (commencing at Section 81000); provided, however, that "payment" shall also include any
18 enforceable promise to make a payment.

19 (4) "Refers to a clearly identified candidate for City elective office or a City elective
20 officer" shall mean any communication that contains the candidate's or officer's name or nickname or
21 makes any other unambiguous reference to the candidate or officer such as "your Supervisor" or "the
22 incumbent."

23 (5) "Disclosure date" shall mean:

24 (A) The date that a written formal agreement regarding the persuasion poll is
25 made between the person making the calls and the poll sponsor(s) or the sponsor(s) agent;

1 *(B) The date of the 1,000th call in the poll; and*

2 *(C) After a person has met the threshold under Subsection (B), the date of each*
3 *1,000th additional call in the poll.*

4 *(b) Telephonic disclosure. No person shall authorize, administer or make payment for a*
5 *persuasion poll unless, at the beginning of each call, the person making the call identifies the person(s)*
6 *making payments for or authorizing the call by stating "This is a paid political advertisement by [Name*
7 *of person(s)]," and, identifies the person making the call, if different from the sponsor, by stating "This*
8 *call is conducted by [Name of person]." These disclosures shall be spoken at the same volume and*
9 *speed as the rest of the communication so as to be clearly audible by the call recipient and otherwise*
10 *appropriately conveyed for the hearing impaired. These disclosures shall be repeated upon request of*
11 *the call recipient.*

12 *(e) Filing.*

13 *(1) Any person who authorizes, administers or makes payment for a persuasion poll*
14 *shall, within 48 hours of each disclosure date, file an itemized statement with the San Francisco Ethics*
15 *Commission. A person authorizing, administering or making payment for a persuasion poll is not*
16 *required to file an itemized statement under this Section if the person is aware that another person*
17 *authorizing, administering or making payment for the same persuasion poll has filed an authorized*
18 *statement for the persuasion poll as required by this Section.*

19 *(2) Each itemized statement required to be filed under this Section shall be filed on a*
20 *form promulgated by the San Francisco Ethics Commission and shall contain the following*
21 *information:*

22 *(A) the full name, street address, city, state and zip code of each person who*
23 *authorizes, administers or makes payment for the persuasion poll;*

1 (B) the full name, street address, city, state and zip code of each person sharing
2 or exercising direction and control over the person authorizing, administering or making payments for
3 the survey;

4 (C) the dates during which the persuasion poll was conducted;

5 (D) for each day, the number of calls attempted to households in the City and
6 County of San Francisco if the election described in Subsection (a)(1)(B) is a City-wide election, or the
7 number of calls to households in the district if the election described in Subsection (a)(1)(B) is a district
8 election;

9 (E) for each day, the number of individuals contacted and the number of
10 messages left in households in the City and County of San Francisco if the election described in
11 Subsection (a)(1)(B) is a City-wide election, or the number of individuals contacted and the number of
12 messages left in households in the district if the election described in Subsection (a)(1)(B) is a district
13 election;

14 (F) a detailed accounting of any payments of \$100.00 or more that the person
15 has received from another person, which were used for conducting or administering the persuasion
16 poll; such detailed accounting shall include the dollar amount or value of each payment; the date of the
17 payment's receipt; the name, street address, city, state, and zip code of the person who made such
18 payment; the occupation and employer of the person who made such payment, if any; or, if the person
19 is self-employed, the name of the person's business; and the cumulative amount of payments received
20 for the purpose of conducting or administering persuasion polls from that person during the calendar
21 year;

22 (G) a copy of the script used in conducting the persuasion poll, if any, and a
23 copy of every question asked in the survey and every statement made to respondents in the survey; and

24 (H) any other information required by the Ethics Commission consistent with
25 the purposes of this Section.

1 (B) The date of the 1,000th call in the poll; and

2 (C) After a person has met the threshold under Subsection (B), the date of each
3 1,000th additional call in the poll.

4 (b) Telephonic disclosure. No person shall authorize, administer or make payment for a
5 persuasion poll unless, at the beginning of each call, the person making the call identifies the person(s)
6 making payments for or authorizing the call by stating "This is a paid political advertisement by [Name
7 of person(s)]," and, identifies the person making the call, if different from the sponsor, by stating "This
8 call is conducted by [Name of person]." These disclosures shall be spoken at the same volume and
9 speed as the rest of the communication so as to be clearly audible by the call recipient and otherwise
10 appropriately conveyed for the hearing impaired. These disclosures shall be repeated upon request of
11 the call recipient.

12 (c) Filing.

13 (1) Any person who authorizes, administers or makes payment for a persuasion poll
14 shall, within 48 hours of each disclosure date, file an itemized statement with the San Francisco Ethics
15 Commission. A person authorizing, administering or making payment for a persuasion poll is not
16 required to file an itemized statement under this Section if the person is aware that another person
17 authorizing, administering or making payment for the same persuasion poll has filed an authorized
18 statement for the persuasion poll as required by this Section.

19 (2) Each itemized statement required to be filed under this Section shall be filed on a
20 form promulgated by the San Francisco Ethics Commission and shall contain the following
21 information:

22 (A) the full name, street address, city, state and zip code of each person who
23 authorizes, administers or makes payment for the persuasion poll;

1 (B) the full name, street address, city, state and zip code of each person sharing
2 or exercising direction and control over the person authorizing, administering or making payments for
3 the survey;

4 (C) the dates during which the persuasion poll was conducted;

5 (D) for each day, the number of calls attempted to households in the City and
6 County of San Francisco if the election described in Subsection (a)(1)(B) is a City-wide election, or the
7 number of calls to households in the district if the election described in Subsection (a)(1)(B) is a district
8 election;

9 (E) for each day, the number of individuals contacted and the number of
10 messages left in households in the City and County of San Francisco if the election described in
11 Subsection (a)(1)(B) is a City-wide election, or the number of individuals contacted and the number of
12 messages left in households in the district if the election described in Subsection (a)(1)(B) is a district
13 election;

14 (F) a detailed accounting of any payments of \$100.00 or more that the person
15 has received from another person, which were used for conducting or administering the persuasion
16 poll; such detailed accounting shall include the dollar amount or value of each payment; the date of the
17 payment's receipt; the name, street address, city, state, and zip code of the person who made such
18 payment; the occupation and employer of the person who made such payment, if any, or, if the person
19 is self-employed, the name of the person's business; and the cumulative amount of payments received
20 for the purpose of conducting or administering persuasion polls from that person during the calendar
21 year;

22 (G) a copy of the script used in conducting the persuasion poll, if any, and a
23 copy of every question asked in the survey and every statement made to respondents in the survey; and

24 (H) any other information required by the Ethics Commission consistent with
25 the purposes of this Section.

1 (3) The filer shall verify, under penalty of perjury, the accuracy and completeness of the
2 information provided in the itemized statement, and shall retain for a period of five years all books,
3 papers and documents necessary to substantiate the itemized statements required by this Section.

4 (4) The Ethics Commission may require any itemized statement to be filed electronically
5 and may permit any required statement to be filed by facsimile. The Ethics Commission shall
6 promulgate regulations to implement this subsection before any person shall be required to file an
7 itemized statement electronically or permitted to file a statement by facsimile.

8 (5) If any person files an itemized statement after any deadline imposed by this Section,
9 the Ethics Commission shall, in addition to any other penalties or remedies established in this Chapter,
10 fine the person \$10 per day after the deadline until the statement is received by the Ethics Commission.
11 The Ethics Commission may reduce or waive a fine if the Commission determines that the late filing
12 was not willful and that enforcement will not further the purposes of this Chapter. The Ethics
13 Commission shall deposit funds collected under this Section in the General Fund of the City and
14 County of San Francisco.

15 (d) The Ethics Commission may adopt regulations exempting additional types of polls from the
16 provisions of this Section to effectuate the purpose of this Section.

17 ~~SEC. 1.161. DISCLOSURE AND FILING REQUIREMENTS FOR MASS MAILINGS.~~

18 ~~(a) MASS MAILINGS BY CANDIDATES.~~

19 ~~(1) Disclosure. In addition to the requirements set forth in California Government~~
20 ~~Code Section 84305, each mass mailing paid for by a candidate committee shall include on the outside~~
21 ~~of each piece of mail in the mass mailing the following statement in not less than 14 point type and in a~~
22 ~~color or print which contrasts with the background so as to be easily legible: "paid for by~~
23 ~~_____ (insert candidate committee's name and street address)." A post office box may be~~
24 ~~stated in lieu of a street address if the candidate committee's address is a matter of public record with~~
25 ~~the Ethics Commission.~~

1 (2) *Filing.*

2 (i) *Each candidate committee that pays for a mass mailing shall, within five*
3 *working days after the date of the mailing, file two pieces of the mailing with the Ethics Commission.*

4 (ii) *Each candidate committee that pays for a mass mailing shall, within five*
5 *business days after the date of the mailing, file an itemized disclosure statement with the Ethics*
6 *Commission for that mailing.*

7 (iii) *Each candidate committee that pays for a mass mailing shall file two pieces*
8 *of mail and the itemized disclosure statement required by Subsections (a)(2)(i) and (a)(2)(ii) within 48*
9 *hours of the date of the mailing if the date of the mailing occurs within the final 16 days before the*
10 *election.*

11 (iv) *Every mass mailing filed pursuant to this subsection shall be clearly legible.*

12 (b) *MASS MAILINGS BY PERSONS OTHER THAN CANDIDATES.*

13 (1) *Disclosure. Any person who makes independent expenditures for a mass mailing*
14 *which supports or opposes any candidate for City elective office shall place the following statement on*
15 *the mailing in typeface no smaller than 14 points:*

16 *Notice to Voters (Required by City and County of San Francisco) This mailing is not*
17 *authorized or approved by any candidate for City and County office or by any election official. It is*
18 *paid for by [name and committee identification number]. [address, city, state]. Total Cost of this*
19 *mailing is [amount].*

20 (2) *Filing.*

21 (i) *Each person who makes independent expenditures of \$1,000 or more for a*
22 *mass mailing which supports or opposes any candidate for City elective office shall file two pieces of*
23 *the mailing and an itemized disclosure statement for the mailing with the Ethics Commission, unless*
24 *that person is otherwise required to file disclosures regarding the communication under Section 1.134,*
25 *1.152, or 1.161.5 of this Code.*

1 ~~(ii) Any filing required by this Section shall be submitted within five business~~
2 ~~days after the date of the mailing if the date of the mailing is more than 16 days before the election, and~~
3 ~~within 48 hours after the mailing if the date of the mailing occurs within the final 16 days before the~~
4 ~~election.~~

5 ~~(iii) Every piece of mail filed pursuant to this Section shall be clearly legible.~~

6 ~~(iv) The Ethics Commission may permit any required statement or mailing to be~~
7 ~~filed by facsimile.~~

8 SEC. 1.161. CAMPAIGN ADVERTISEMENTS.

9 (a) DISCLAIMERS. In addition to complying with the disclaimer requirements set forth in
10 Chapter 4 of the California Political Reform Act, California Government section 84100 et seq., and its
11 enabling regulations, all committees making expenditures which support or oppose any candidate for
12 City elective office or any City measure shall also comply with the following additional requirements:

13 (1) TOP TWO CONTRIBUTORS. The disclaimer requirements for primarily formed
14 independent expenditure committees and primarily formed ballot measure committees set forth in the
15 Political Reform Act with respect to a committee's top two major contributors shall apply to
16 contributors of \$20,000 or more. The Ethics Commission may adjust this monetary threshold to reflect
17 any increases or decreases in the Consumer Price Index. Such adjustments shall be rounded off to the
18 nearest five thousand dollars.

19 (2) WEBSITE REFERRAL. Each disclaimer required by the Political Reform Act or its
20 enabling regulations and by this section shall be followed in the same required format, size and speed
21 by the following phrase: "Financial disclosures are available at sfethics.org." A substantially similar
22 statement that specifies the web site may be used as an alternative in audio communications.

23 (3) MASS MAILINGS AND SMALLER WRITTEN ADVERTISEMENTS.

1 Any disclaimer required by the Political Reform Act and by this section on a mass
2 mailing, door hanger, flyer, poster, oversized campaign button or bumper sticker, or print
3 advertisement shall be printed in at least 12-point font.

4 (4) CANDIDATE ADVERTISEMENTS. Advertisements by candidate committees shall
5 include the following disclaimer statements: "Paid for by _____ (insert the name of the candidate
6 committee)." and "Financial disclosures are available at sfethics.org." Except as provided in
7 subsection (a)(3), the statements' format, size and speed shall comply with the disclaimer requirements
8 for independent expenditures for or against a candidate set forth in the Political Reform Act and its
9 enabling regulations.

10 (b) FILING REQUIREMENTS.

11 (1) INDEPENDENT EXPENDITURES. Committees required by state law to file late
12 independent expenditure reports disclosing expenditures that support or oppose a candidate for City
13 elective office shall also file with the Ethics Commission on the same date a copy of the associated
14 advertisement(s), and

15 (A) if the advertisement is a telephone call, a copy of the script and, if the
16 communication is recorded, the recording shall also be provided; or

17 (B) if the advertisement is audio or video, a copy of the script and an audio or
18 video file shall be provided.

19 (2) CANDIDATE MASS MAILINGS.

20 (A) Each candidate committee that pays for a mass mailing shall, within five
21 working days after the date of the mailing, file a copy of the mailing and an itemized disclosure
22 statement with the Ethics Commission for that mailing.

23 (B) Each candidate committee that pays for a mass mailing shall file a copy of
24 the mailing and the itemized disclosure statement required by subsection (b)(2) within 48 hours of the
25 date of the mailing if the date of the mailing occurs within the final 16 days before the election.

1 (3) The Ethics Commission shall specify the method for filing copies of advertisements
2 and mass mailings.

3 SEC. 1.161.5. 1.162. DISCLOSURE AND FILING FOR ELECTIONEERING
4 COMMUNICATIONS.

5 (a) DISCLOSURE STATEMENTS DISCLAIMERS.

6 (1) Every electioneering communication for which a statement is filed pursuant to
7 subsection (b) shall include ~~a disclosure statement~~ the following disclaimer: "Paid for by _____
8 (insert the name of the person who paid for the communication)." and "Financial disclosures are
9 available at sfethics.org." ~~identifying the person who paid for the communication. Such disclosure~~
10 ~~statement shall, at a minimum, contain the following words, "paid for by _____ (insert the~~
11 ~~name of the person who paid for the communication)."~~

12 (2) Any disclosure statement required by this section to be in printed form shall be
13 printed in a type and color so as to be easily legible to the intended public. Such disclosure statement
14 shall be printed in at least 14 point type and in a color or print that contrasts with the background so as
15 to be easily legible to the intended public.

16 (3) Any disclosure statement required by this Section to be in spoken form shall be
17 spoken at the same volume and speed as the rest of the communication so as to be clearly audible and
18 understood by the intended public and otherwise appropriately conveyed for the hearing impaired.

19 (2) Any disclaimer required by this Section shall be included in or on an electioneering
20 communication in a size, speed or format that complies with the disclaimer requirements for
21 independent expenditures supporting or opposing candidates set forth in the Political Reform Act and
22 its enabling regulations.

23 (3) Notwithstanding subsection (a)(2), any disclaimer required by this Section to appear
24 on a mass mailing shall be printed in at least 12-point font.

25 (b) REPORTING OBLIGATIONS.

(1) Every person who makes payments for electioneering communications in an aggregate amount of \$1,000 per candidate during any calendar year shall, within ~~48~~ 24 hours of each disclosure date distribution, file ~~an itemized~~ a disclosure statement with the Ethics Commission, ~~unless that person is otherwise required to file disclosures regarding the communication under Section 1.134, 1.152, or 1.161 of this Code. For the purposes of this subsection, payments for a communication that refers only to one candidate shall be attributed entirely to that candidate. Payments for a communication that refers to more than one candidate, or also refers to one or more ballot measures, shall be apportioned among each candidate and measure according to the relative share of the communication dedicated to that candidate or measure.~~

(2) Each ~~itemized~~ disclosure statement required to be filed under this Section shall contain the following information for each communication:

(A) the full name, street address, city, state and zip code of the person making payments for electioneering communications;

(B) the name of any individual sharing or exercising direction and control over the person making payments for electioneering communications;

~~(C) the total amount of payments made by the person for electioneering communications during the calendar year;~~

~~(D) a detailed description of each payment made by the person for electioneering communications during the calendar year, provided that the person has not already reported such payments on an itemized disclosure statement filed under this Section; such detailed description shall include the date the payment was made, the full name and address of the person to whom the payment was made, the amount of the payment, and a brief description of the consideration for which each payment was made;~~

(C) the distribution date of the electioneering communication, the name(s) and office(s) of the candidate(s) for City elective office or City elective officer(s) referred to in the

1 communication, the payments for the communication attributable to each such candidate or officer, a
2 brief description of the consideration for which the payments were made, whether the communication
3 supports, opposes, or is neutral with respect to each such candidate or officer, and the total amount of
4 reportable payments made by the person for electioneering communications referencing each such
5 candidate or officer during the calendar year;

6 ~~(E)~~ a detailed accounting of any payments of \$100 or more that the person has
7 received from another person, which were used for making electioneering communications, provided
8 that the person has not already reported such payments received on an itemized disclosure statement
9 filed under this Section; such detailed accounting shall include the dollar amount or value of each
10 payment, the date of the payment's receipt, the name, street address, city, state, and zip code of the
11 person who made such payment, the occupation and employer of the person who made such payment, if
12 any, or, if the person is self-employed, the name of the person's business, and the cumulative amount of
13 payments received for the purpose of making electioneering communications from that person during
14 the calendar year;

15 ~~(D)~~ for any payments of \$100 or more that the person has received from another
16 person, which were used for making electioneering communications, the date of the payment's receipt,
17 the name, street address, city, state, and zip code of the person who made such payment, the occupation
18 and employer of the person who made such payment, if any, or, if the person is self-employed, the name
19 of the person's business, and the cumulative amount of payments received from that person during the
20 calendar year which were used for making electioneering communications;

21 ~~(F)~~ the total amount of all payments reported under Subsection (E) during the
22 calendar year;

23 ~~(GE)~~ a legible copy of the electioneering communication, and if in printed
24 form, or a transcript of the electioneering communication if in spoken form; and

1 (i) if the communication is a telephone call, a copy of the script and if the
2 communication is recorded, the recording shall be provided; or

3 (ii) if the communication is audio or video, a copy of the script and an
4 audio or video file shall be provided.

5 (HF) any other information required by the Ethics Commission consistent
6 with the purposes of this Section.

7 (3) The filer shall verify, under penalty of perjury, the accuracy and
8 completeness of the information provided in the ~~itemized~~-disclosure statement, and shall retain
9 for a period of five years all books, papers and documents necessary to substantiate the
10 ~~itemized~~ statements required by this Section.

11 (4) ~~The Ethics Commission may permit any required statement or mailing to be filed by~~
12 ~~facsimile~~ The Ethics Commission shall determine the method for filing the disclosure statement and the
13 copy of the communication, which may include electronic filing.

14 (c) REGULATIONS. The Ethics Commission may issue regulations implementing this Section.

15 (c) DEFINITIONS. Whenever in this Section the following words or phrases are used, they
16 shall mean:

17 (1) "Disclosure Date" shall mean:

18 (A) the first date during any calendar year when an electioneering
19 communication is distributed after a person has made payments aggregating \$1,000.00 for
20 electioneering communications; and

21 (B) after a person has met the threshold under Subsection (A), any date during
22 that same calendar year when an electioneering communication is distributed, if that same person
23 made any payments for such electioneering communication.

24 (2) "Distributed" shall mean any act that permits an electioneering communication to
25 be viewed, read or heard.

1 (3) "Electioneering Communication" shall mean any communication, including but not
2 limited to any broadcast, cable, satellite, radio, internet, or telephone communication, and any mailing,
3 flyer, doorhanger, pamphlet, brochure, card, sign, billboard, facsimile, or printed advertisement, that:

4 (A) refers to a clearly identified candidate for City elective office or a City
5 elective officer who is the subject of a recall election; and

6 (B) is distributed within 90 days prior to an election for the City elective office
7 sought by the candidate or a recall election regarding the City elective officer to 500 or more
8 individuals who are registered to vote or eligible to register to vote in the election or recall election.
9 There shall be a rebuttable presumption that any that any broadcast, cable, satellite, or radio
10 communication and any sign, billboard or printed advertisement is distributed to 500 or more
11 individuals who are eligible to vote for or against the candidate clearly identified in the
12 communication.

13 (C) The term "Electioneering Communication" shall not include:

14 (i) communications that constitute independent expenditures under this
15 Chapter;

16 (ii) communications made by a slate mailer organization if such
17 communications are required to be disclosed under the California Political Reform Act, California
18 Government Code Section 81000, et seq.;

19 (iii) communications paid for by the City or any other local, State or
20 Federal government agency;

21 (iv) non-recorded communications between two or more individuals in
22 direct conversation unless such communications are made by telephone and at least one of the
23 individuals is compensated for the purposes of making the telephone communication;

24 (v) communications that appear on bumper stickers, pins, stickers, hat
25 bands, badges, ribbons and other similar memorabilia;

1 (vi) news stories, commentaries or editorials distributed through any
2 newspaper, radio station, television station, or other recognized news medium unless such news
3 medium is owned or controlled by any political party, political committee or candidate;

4 (vii) communications to all members, employees and shareholders of an
5 organization, other than a political party, provided that such communications do not constitute general
6 public advertising such as, but not limited to, broadcasting, billboards, and newspaper advertisements;

7 (viii) that occur during a candidate debate or forum; and

8 (ix) communications made solely to promote a candidate debate or
9 forum made by or on behalf of the person sponsoring the debate or forum, provided that such
10 communications do not otherwise discuss the positions or experience of a candidate for City elective
11 office or a City elective officer who is the subject of a recall election.

12 (4) "Internet Communication" shall include paid internet advertisements such as
13 "banner" and "pop up" advertisements, paid emails or emails sent to addresses purchased from
14 another person, and similar types of internet communications as defined by the Ethics Commission by
15 regulation, but shall not include web blogs, listserves sent to persons who have contacted the sender,
16 discussion forums, or general postings on web pages.

17 (5) "Payment" shall be defined as set forth in Government Code of the State of
18 California (commencing at Section 81000); provided, however, that "payment" shall also include any
19 enforceable promise to make a payment.

20 (6) "Refers to a clearly identified candidate for City elective office or a City elective
21 officer who is the subject of a recall election" shall mean any communication that contains the
22 candidate's or officer's name, nickname or image or makes any other unambiguous reference to the
23 candidate or officer such as "your Supervisor" or "the incumbent."

24 (D) REGULATIONS. The Ethics Commission shall issue regulations implementing this
25 Section, including regulations defining all members, employees and shareholders of an organization.

1 SEC. 1.162. DISCLOSURE REQUIREMENTS CAMPAIGN ADVERTISEMENTS.

2 ~~(a) Disclosure. Any campaign advertisement that urges support for or opposition to one or~~
3 ~~more candidates for City elective office shall include a disclosure statement identifying the person who~~
4 ~~paid for the advertisement. Such disclosure statement shall, at a minimum, contain the following~~
5 ~~words, "paid for by _____ (insert the name of the person who paid for the communication)"~~
6 ~~and appear at least once on the advertisement.~~

7 ~~(1) Any disclosure statement required by this section to be in printed form shall be~~
8 ~~printed in a type and color so as to be easily legible to the intended public. Such disclosure statement~~
9 ~~shall be printed in at least 14 point type and in a color or print that contrasts with the background so~~
10 ~~as to be easily legible to the intended public.~~

11 ~~(2) Any disclosure statement required by this section to be in spoken form shall be~~
12 ~~spoken at the same volume and speed as the rest of the communication so as to be clearly audible and~~
13 ~~understood by the intended public and otherwise appropriately conveyed for the hearing impaired.~~

14 ~~(b) Definitions. For the purposes of this Section, the term "campaign advertisement" means:~~

15 ~~(1) Programming received by a television or radio;~~

16 ~~(2) A communication placed in a newspaper, periodical or magazine of general~~
17 ~~circulation;~~

18 ~~(3) Posters, door hangers, and yard signs produced in quantities of 200 or more; and~~

19 ~~(4) A billboard.~~

20 SEC. 1.163. DISCLOSURE REQUIREMENTS RECORDED TELEPHONE MESSAGES.

21 ~~Any recorded telephone message distributed to 500 or more individuals or households must~~
22 ~~include the following statement: "paid for by _____ (insert name of person who paid for the~~
23 ~~recorded telephone message)." Statements required pursuant to this Section shall be audible and~~
24 ~~played at the same volume and speed as the rest of the recorded telephone message. Any person paying~~
25

1 for a recorded telephone message must maintain a transcript of the message and a record of the
2 number of distributed calls for each message.

3 SEC. 1.163. MEMBER COMMUNICATIONS.

4 (a) Every person who makes payments for member communications in an aggregate amount of
5 \$1,000 per candidate within the 90 days prior to an election shall, within 24 hours of each distribution,
6 file a disclosure statement with the Ethics Commission. For the purposes of this subsection, payments
7 for a communication that supports or opposes only one candidate shall be attributed entirely to that
8 candidate. Payments for a communication that supports or opposes more than one candidate, or also
9 supports or opposes one or more ballot measures, shall be apportioned among each candidate and
10 measure according to the relative share of the communication dedicated to that candidate or measure.

11 (b) Each disclosure statement required to be filed under this Section shall contain the following
12 information:

13 (1) the full name, street address, city, state and zip code of the person making payments
14 for member communications;

15 (2) the name of any individual sharing or exercising direction and control over the
16 person making payments for member communications;

17 (3) the distribution date of the member communication, the name(s) and office(s) of the
18 candidate(s) for City elective office or City elective officer(s) referred to in the communication, the
19 payments for the communication attributable to each such candidate or officer, a brief description of
20 the consideration for which the payments for such costs were made, whether the communication
21 supports or opposes each such candidate or officer, and the total amount of reportable payments made
22 by the person for member communications supporting or opposing each such candidate or officer
23 during the calendar year;

24 (4) a legible copy of the member communication; and
25

1 (A) if the communication is a telephone call, a copy of the script and if the
2 communication is recorded, the recording shall be provided; or

3 (B) if the communication is audio or video, a copy of the script and an audio or
4 video file shall be provided.

5 (5) any other information required by the Ethics Commission consistent with the
6 purposes of this Section.

7 (c) The filer shall verify, under penalty of perjury, the accuracy and completeness of the
8 information provided in the disclosure statement, and shall retain for a period of five years all books,
9 papers and documents necessary to substantiate the statements required by this Section.

10 (d) REGULATIONS. The Ethics Commission may issue regulations implementing this Section.

11
12 Section 3. Effective Date. This ordinance shall become effective 30 days after
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
15 of Supervisors overrides the Mayor's veto of the ordinance.

16
17 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
18 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
19 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
20 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
21 additions, and Board amendment deletions in accordance with the "Note" that appears under
22 the official title of the ordinance.

23
24 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
25 of this ordinance, or any application thereof to any person or circumstance, is held to be

1 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
2 shall not affect the validity of the remaining portions or applications of the ordinance. The
3 Board of Supervisors hereby declares that it would have passed this ordinance and each and
4 every section, subsection, sentence, clause, phrase, and word not declared invalid or
5 unconstitutional without regard to whether any other portion of this ordinance or application
6 thereof would be subsequently declared invalid or unconstitutional.
7

8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 ANDREW SHEN
12 Deputy City Attorney

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Summary of Comments at Interested Persons Meetings and Related Staff Assessments¹

Definitions and Related Issues	
Comment 1. An individual suggested exempting nonprofit fundraising event invitations that mention candidates (i.e., the candidate appears as the keynote speaker at the nonprofit's fundraiser) from the definition of electioneering communications.	Staff assessment: Staff agrees with this suggestion for 501(c)(3) nonprofits, which are prohibited from advocating for or against any candidate. Staff has incorporated language to this effect into the proposed ordinance.
Comment 2. Certain individuals urged that candidate endorsements placed on ballot measure communications should trigger electioneering communication rules.	Staff assessment: Staff agrees. Under existing law, ballot measure ads referencing one or more candidates constitute electioneering communications. However, the proposed changes would clarify that reporting and disclaimer rules are triggered only if the cost of the communication attributable to a particular candidate is \$1,000 or more.
Comment 3. An individual expressed concern that the term "persuasion poll" confuses many in the public, who might mistakenly believe that paying for polls actually designed to collect information (instead of directly influence a City election) triggers special reporting.	Staff assessment: Staff has removed term "persuasion poll" from CFRO under the proposed changes, as such polls would constitute either electioneering communications or independent expenditures.
Comment 4. An individual suggested that the proposed CFRO section that includes a list of small written items that must have a 12-point font disclaimer more closely track the FPPC's guidelines.	Staff assessment: Staff has made this change.
Comment 5. An individual suggested that CFRO define the term "distribution" in addition to "distribute," which is already defined.	Staff assessment: Staff has made this change.
Reporting Issues	
Comment 6. An individual asked why staff did not propose eliminating the requirement for candidates to report mass mailings.	Staff assessment: The referenced provision helps with enforcement, primarily of disclaimer rules.
Comment 7. State law requires 24-hour disclosure of independent expenditures totaling \$1,000 or more during the 90 days prior to an election. Staff proposed imposing a similar threshold for electioneering communications and member communications. Noting the low cost for online communications, slate cards, etc., an individual urged the adoption of a third-party disclosure threshold based on the number of recipients of a	Staff assessment: Staff believes that the \$1,000 state threshold is low enough to capture relevant spending (online or otherwise), particularly since reporting is triggered by aggregate spending (i.e., total spending for all independent expenditures). A different threshold would likely lead to confusion, be inconsistent with state law, and burden low-cost grassroots electioneering. Staff notes that the FPPC has explicitly determined that

¹ This summary is included after the request of an attendee at the second IP meeting. Comments from the first meeting are also included. For ease of reference, comments are grouped by subject matter and in certain instances represent a distillation of separate comments.

Appendix B

communication (instead of the \$1,000 monetary threshold) in order to ensure disclosure of low cost activities.	cost personal internet activity does not constitute either a contribution or an expenditure. (FPCC Reg. 18215.2.)
Comment 8. State law requires disclosure of independent expenditures within 24 hours for the 90 days prior to an election (but not for Election Day). Staff proposed imposing 24 hour reporting requirements for electioneering communications and member communications during the same period. An individual urged imposing these reporting requirements for Election Day itself (i.e., a report due the day after the election).	Staff assessment: Staff does not believe that a sufficient reason exists to deviate from state law and expand the current 24 hour reporting requirement to cover the day of the election. The primary purposes of 24 hour reporting are to inform the public prior to voting and to facilitate the City's public financing program. Staff is not persuaded that 24 hour disclosure concerning third-party communications after Election Day serves these purposes. Financial information about independent expenditures and most electioneering communications (i.e., ballot measure ads) on Election Day will be disclosed in year-end reports.
Comment 9. Two individuals requested that the Commission specify how to calculate the cost of postings on established websites (including company sites, Facebook, etc.) for purposes of electioneering communication/independent expenditure reporting, particularly when the \$1,000 threshold has otherwise been met and requires disclosure of all prior electioneering communications/independent expenditures.	Staff assessment: Staff agrees that this issue should be addressed, but would propose doing so via a Commission regulation.
Comment 10. State 24 hour disclosure requirements for independent expenditures do not require that the filer disclose vendors used for these IEs. These vendors are included on campaign reports filed at other times. Staff's proposed 24 hour reporting requirements for electioneering communication/member communication similarly do not require vendor reporting. An individual urged that the CFRO proposals require vendor disclosure for all three types of 24 hour reports.	Staff assessment: Staff believes that a single set of reporting requirements for payments made should generally be applicable to independent expenditures, electioneering communications, and member communications, and that those requirements should be based on the state requirements for independent expenditures. Moreover, staff questions the public demand for vendor information on a 24 hour basis. Finally, staff notes that vendor information is reported on pre-election, mid-year and end of year reports for all independent expenditures and for most electioneering communications (which mostly consist of ballot measure ads).
Comment 11. An individual urged requiring that member communications disclosures include information about the nature of the communication (e.g., mailers, phone calls, etc.) and the identity of the members whose funds were used to pay for the communications.	Staff assessment: Staff agrees that member communications disclosures should specify the nature of reported communication and has added this requirement to the proposed changes. However, staff does not believe that requiring disclosure of member funds used for these internal communications is warranted. Moreover, increasing the current disclosure in this manner would present particularly difficult compliance issues for unions which engage in most of the reported member communications. Notably, federal law does not require donor disclosure in its member communications reporting.

<p>Comment 12. City law currently requires 48 hour disclosure for persuasion polls (i.e., "polls" really intended to influence a candidate election). Staff proposed consolidating this requirement with those for electioneering communications and/or independent expenditures. An individual suggested requiring disclosure of information currently required for persuasion polls, but not required for electioneering communications and/or independent expenditures, including number of calls attempted, individuals contacted, and messages left.</p>	<p>Staff assessment: Staff does not believe that a sufficient reason exists to alter state law requirements or to justify imposing the additional requirements (i.e., listing number of calls, etc.) for electioneering communication or member communication reporting. Imposition of such requirements would certainly come at the cost of increased complexity and compliance costs and staff does not believe that there is sufficient demand for, or public benefit from, such information on a 24 hour basis.</p>
<p>Comment 13. An individual expressed concern that certain slate mailer spending would not be captured by the City's third-party disclosure rules. The individual also urged that the City designate the Ethics Commission as the filing officer for slate mailers.</p>	<p>Staff assessment: Most payments for slate mailer endorsements will in fact be reported as independent expenditures (if they reach the \$1,000 threshold). Although outside the scope of the current set of amendments, staff believes that there is merit to the idea of having the City designate the Ethics Commission as the filing officer for slate mailers, but would propose addressing this issue at a later date after staff has explore it more fully.</p>
<p>Comment 14. An individual urged that 24 hour reporting deadlines for electioneering communications and member communications should be consistent with state law rules for independent expenditure reporting, and that the Commission should not extend any deadlines for the electioneering communications and member communications that fall on a weekend day or holiday.</p>	<p>Staff assessment: Staff agrees that 24 hour reporting deadlines for electioneering communications and member communications should be consistent with state law. However, staff proposes addressing this issue by revisiting SPEEC regulation 1.172-1. (See CFRO § 1.172 [Commission may address holiday and weekend extensions by regulation].)</p>
<p>Comment 15. An individual urged that the CFRO proposals make clear that, where an electioneering communication referenced numerous candidates or measures, the \$1,000 reporting threshold only applied to the proportionate amount of the cost of the communication attributable to each candidate or measure.</p>	<p>Staff assessment: Staff agrees and has included language to this effect.</p>
<p>Comment 16. An individual urged that the CFRO proposals make clear whether the \$1,000-threshold for reporting electioneering communications and member communications was triggered by either expenditures that total, in aggregate, \$1,000 or a single expenditure of \$1,000.</p>	<p>Staff assessment: Staff agrees and has included language to this effect.</p>
<p>Comment 17. An individual objected to staff's proposal to limit supplemental pre-election reporting to instances where the City general purpose committee has made contributions or independent expenditures of \$500 or more in connection with a City election. The individual claimed that this change would open too many loopholes, including transfers of funds to state committees that are ultimately used in City elections.</p>	<p>Staff assessment: Staff has modified the proposed change, and now recommends an amendment that would eliminate the need for a pre-election report; if expenditures are made solely for legal and accounting and other administrative costs.</p>

Appendix B

<p>Comment 18. An individual suggested that staff require copies of all ballot measure ads to be filed with the Ethics Commission within 24 hours.</p>	<p>Staff assessment: Although staff may wish to explore this idea in the future, it would result in a substantial increase in filings with the Commission that do not fit within the scope of the proposed changes and that staff is not currently prepared to handle.</p>
Disclaimer Issues	
<p>Comment 19. State law requires contributors of \$50,000 or more to be named in disclaimers on certain independent expenditure and ballot measure communications. Staff proposed decreasing the threshold to \$25,000 for City elections. An individual suggested also requiring the naming of the committee's unpaid consultants or other vendors whose accrued expenses meet this monetary threshold as part of this disclaimer requirement.</p>	<p>Staff assessment: Staff does not agree with this proposal. The disclaimers at issue normally refer to contributors, but accrued expenses are generally not contributions. Moreover, staff is not persuaded that the public is interested in knowing a campaign's vendors on a campaign communication, even if that vendor has not been paid during the beginning of the campaign. Also, determining how long an accrued expense would have to be outstanding to trigger the requirement (i.e., 30 days, 45 days, etc.) in a sensible and workable manner would be problematic.</p>
<p>Comment 20. An individual contended that state law does not currently require certain disclaimers for ballot measure and independent expenditure committees with donors of less than \$50,000, and thus that the proposed changes would not capture ballot measure and independent expenditure committees with donors of less than \$25,000.</p>	<p>Staff assessment: Staff's proposal is intended to augment state law disclaimer rules. Staff confirmed with counsel for the Fair Political Practices Commission that the commenter's interpretation of state law is incorrect.</p>
<p>Comment 21. An individual urged that that the proposed changes make clear that they are not intended to require ballot measure communications to include a disclaimer used for independent expenditures regarding a candidate ("Not authorized by a candidate or committee controlled by a candidate").</p>	<p>Staff assessment: Staff agrees, and believes that the proposed language accomplishes this goal.</p>
<p>Comment 22. Certain individuals urged that the proposed CFRO changes make clear how electioneering communications disclaimer requirements apply to ballot measure ads that reference an endorsing candidate.</p>	<p>Staff assessment: Staff agrees, and believes that the proposed language accomplishes this goal. The disclaimer rules are triggered only if the cost of the part of the communication attributable to the candidate is \$1,000 or more.</p>
<p>Comment 23. Staff proposed eliminating the City's disclosure requirements for robo-calls given basically identical state requirements. An individual expressed concern that the City's requirement that robo-call disclaimers are said "at the same volume and speed of the rest of the message" would not be retained.</p>	<p>Staff assessment: State law will require any independent expenditure robo-calls sent by a political committee to include a disclaimer that is "spoken in a clearly audible and intelligible manner." (PPPC Reg. § 18450.4.) Staff believes that this requirement is sufficient.</p>
Other Issues	
<p>Comment 24. After the meeting, an individual urged that Commission take a number of actions beyond the scope of the current regulatory proposals including, a private right of action for all ethics violations, the imposition of</p>	<p>Staff assessment: Some or all of these suggestions may have merit. However, most are outside the scope of the current proposals, which are deliberately targeted in nature. Staff will consider certain of these</p>

Appendix B

limited denials of participation in City business for CFRO violations; required disclosure of a campaign's finance committee members; additional belated payment disclosure by donors regarding their City business; contribution bans for persons receiving a "public benefit" from the City (i.e., reinstate part of Proposition J); itemized disclosure of donors for gifts of travel to City officials; and limits on candidate-controlled general purpose committees.	suggestions – some of which were included in the recent Civil Grand Jury report – in the near future.
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Appendix C

FILING REQUIREMENTS FOR THIRD-PARTY COMMUNICATIONS THAT SUPPORT OR OPPOSE A CANDIDATE*

CURRENT REQUIREMENTS:

Communication	Threshold (\$)	Due Date	Form
Independent Expenditures – All	\$1,000/candidate	24 hrs.	FPFC Form 496
Independent Expenditures – Mass Mailings	\$1,000	5 working days or 48 hrs. if 16 days before election	Third-Party Disclosure Form (Parts 1, 2, 3 & 5) plus two copies
Electioneering Communications	\$1,000	48 hrs.	Third-Party Disclosure Form (Parts 1, 2, 3 & 6) plus a copy
“\$5,000 expenditures” – Independent Expenditures, Electioneering Communications, Member Communications	\$5,000/candidate	24 hrs.	Third-Party Disclosure Form (Parts 1, 2, 3 & 4) plus a copy
Persuasion Polls	N/A	48 hrs.	Third-Party Disclosure Form (Parts 1, 2, 3 & 7) plus a copy

PROPOSED REQUIREMENTS:

Communication	Threshold (\$)	Due Date	Form
Independent Expenditures – All	\$1,000/candidate	24 hrs.	FPFC Form 496 plus a copy
Electioneering Communications	\$1,000/candidate	24 hrs.	Electioneering Communications Form plus a copy
Member Communications	\$1,000/candidate	24 hrs.	Member Communications Form plus a copy

*Does not include mid-year report, end-of-year report, or 2 pre-election reports.

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change, from the first settlers to the present day. It is a story of the struggles and triumphs of a young nation.

The early years of the United States were marked by the struggles of the first settlers. They faced many hardships, but they persevered and built a new life for themselves. The American Revolution was a turning point in the nation's history. It was a time of great change and growth. The United States emerged as a new and powerful nation.

The American Civil War was a time of great struggle and sacrifice. It was a war that shaped the nation and its future. The United States emerged as a more unified and powerful nation. The American West was a time of great exploration and discovery. It was a time when the United States expanded its territory and became a more powerful nation.

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For SFEC use

THIRD PARTY DISCLOSURE FORM REGARDING SAN FRANCISCO CANDIDATES

(S.F. Campaign and Governmental Conduct Code §§ 1.134(c), 1.152(a)(3), 1.152(b)(3), 1.161(b), 1.161.5, and 1.160.5)

I. Instructions

Use this form to report third party spending regarding candidates for the following San Francisco City elective offices: Mayor, Board of Supervisors, Board of Education, Board of the Community College District, Sheriff, District Attorney, City Attorney, Treasurer, Assessor and Public Defender. If you have any questions about this form, please contact the Ethics Commission at 415-252-3100.

II. What type of third party spending must be reported?

San Francisco Campaign and Governmental Conduct Code ("S.F. C&GC Code") sections 1.134(c), 1.152(a)(3), 1.152(b)(3), 1.161(b), 1.161.5, and 1.160.5 require persons who make any: (1) independent expenditure, (2) electioneering communication, or (3) member communication that clearly identifies a candidate for City elective office or authorizes administrators or pays for a (4) persuasion poll to file disclosure statements with the Ethics Commission. For more information, please refer to the applicable sections of the law, available on the Ethics Commission's website at www.sfethics.org.

III. How to Complete the Third Party Disclosure Form

All filers must complete Parts 1, 2, and 3 of this form. In Part 3, check the box(es) that identify your filing.

If you are attaching additional sheets of paper, check the box at the bottom of the section (part) to which the additional sheets of paper apply and label the additional sheet(s).

Part 1

Report Number: Assign a unique identification number to each Third Party Disclosure Form that you file for an election. You may use any numbering system such as 1, 2, 3 or a, b, c, or Candidate Ava-1, Candidate Ava-2, Candidate Ava-3, Candidate Bob-1, Candidate Bob-2 and so forth. Also label each communication with the same report number given to the form that the communication accompanies.

Amendments: If you are amending a previously filed form, check the Amendment box, and enter the identification number of the report that you are amending. Describe the reason for the amendment in the space provided.

A filer who does not know the actual costs when he or she is required to file this form may provide good faith estimates, provided that the filer must amend this statement within 48 hours after he or she receives accurate information regarding the actual costs.

GOVERNMENT
DOCUMENTS DEPT

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Part 2

Filer information: Provide filer's complete contact information.

Part 3

Type of filing: Check the box(es) that identify the reason for filing this form. A single communication may trigger filing requirements prescribed by more than one section of the law. By filing one form, checking all the boxes that apply in part 3, providing the required disclosure in other parts of this form, and providing the applicable copy (copies) of the communication, you will satisfy the various filing requirements prescribed by sections 1.134(c), 1.152(a)(3), 1.152(b)(3), 1.161(b), 1.161.5, and 1.160.5.

Part 4---S.F. C&GC Code §§ 1.134(c), 1.152(a)(3), and 1.152(b)(3): \$5,000 expenditures

Who files: Part 4 of this form must be completed by any person¹ who makes expenditures for the purpose of distributing independent expenditures, electioneering communications or member communications that clearly identify a candidate for City elective office in an aggregate amount of \$5,000 or more per candidate.

When to file: Within 24 hours of (1) reaching the initial threshold of \$5,000 and (2) each time the person makes or incurs an additional expense that in the aggregate totals \$5,000 or more per candidate.

This disclosure is required in a race for Mayor or Board of Supervisors only if the Ethics Commission has certified that at least one candidate for Mayor or one candidate for the Board of Supervisors in the same district is eligible to receive public funds. In all other races, disclosure is required only if at least one candidate has accepted the applicable voluntary expenditure ceiling and the Ethics Commission has not lifted that voluntary expenditure ceiling.

What to file: A disclosure statement (Part 4 of this form) and a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video.

The cost of a communication that supports or opposes more than one candidate or measure must be apportioned among each candidate and measure in the communication. Your records must include a calculation of how such costs were apportioned and determined.

Part 5---S.F. C&GC Code § 1.161(b): mass mailing

Who files: Any person who makes independent expenditures of \$1,000 or more for a mass mailing that supports or opposes any candidate for City elective office must complete Part 5 of this form. The filer must disclose the itemized costs associated with the mailing, including but not limited to the amounts paid for photography, design, production, printing, distribution and postage. The filer must show each separate charge or payment for each cost associated with the mailing.

When to file: Within (a) five (5) working days after the date of the mailing; or (b) 48 hours of the date of the mailing if the date of the mailing occurs within the final 16 days before the election.

What to file: A disclosure statement (Part 5 of this form) and two originals of the mass mailing.

What disclosure is required on the mass mailing?

The mass mailing must contain the following disclosure in at least 14 point font:

¹ A person is any individual, partnership, corporation, association, firm, proprietorship, joint venture, syndicate, business trust, company, limited liability company, committee, club or other organization or group of persons acting in concert, however organized.

Appendix D

Notice to Required Voters (Required by City and County of San Francisco)

This mailing is not authorized or approved by any candidate for City and County office or by any election official. It is paid for by [name and committee identification number]. [address, city, state].

Total Cost of this mailing is [amount].

Part 6—S.F. C&GC Code § 1.161.5: electioneering communication

Who files: Any person who makes payments for electioneering communications² that total \$1,000 during any calendar year.

When to file: Within 48 hours of each disclosure date.³

What to file: A disclosure statement (Part 6 of this form) and a legible copy of the electioneering communication if it is in printed form or a transcript of the electioneering communication if it is in spoken form.

What disclosure is required on the communication?

The electioneering communication must contain the following words, “paid for by ____ (insert the name of the person who paid for the communication).” This disclosure statement must be in at least 14 point type if the communication is in written form, or spoken at the same volume and speed as the rest of the communication and appropriately conveyed for the hearing impaired if it is in spoken form.

Part 7—S.F. C&GC Code § 1.160.5: persuasion poll

Who files: Any person who authorizes, administers or makes payment for a persuasion poll⁴ must file this itemized statement with the San Francisco Ethics Commission within 48 hours of each disclosure date, unless the person is aware that another person authorizing, administering or making payment for the same persuasion poll has filed a form under section 1.160.5.

² An electioneering communication is any communication (such as any broadcast, cable, satellite, radio, internet, or telephone communication, and any mailing, flyer, doorhanger, pamphlet, brochure, card, sign, billboard, facsimile, or printed advertisement) that: refers to a clearly identified candidate for City elective office or a City elective officer who is the subject of a recall election; and is distributed 90 days prior to an election for the City elective office sought by the candidate or a recall election regarding the City elective officer to 500 or more individuals.

³ “Disclosure date” means (A) the first date during any calendar year when an electioneering communication is distributed after a person has made payments aggregating \$1,000 for electioneering communications; and (B) after the person has met the threshold under (A), any date during the same calendar year when an electioneering communication is distributed, if that same person made any payments for such electioneering communication.

⁴ A “persuasion poll” is any telephone survey, or series of telephone surveys that are substantially similar or identical, that refers to a clearly identified candidate for City elective office or City elective officer, other than in a basic preference question, and that includes:

1. At least one call made within 60 days prior to an election for the City elective office sought by the candidate named in the survey or prior to a recall election regarding the City elective officer named in the survey; and
2. At least 1,000 completed calls, such as person-to-person discussions following the survey script; and

For which at least two of the following are true:

- Each phone conversation takes less than four minutes on average to complete, excluding any sponsorship identification.
- The survey includes fewer than three demographic inquiries regarding factors such as age, educational level, or marital status.
- The persons conducting the survey do not collect or tabulate survey results for all the phone conversations.
- The survey includes an untrue statement about the candidate or officer described in the persuasion poll.
- The survey is designed or intentionally conducted in a manner calculated to influence the vote of the call recipient.

When to file: Within 48 hours of the date of each of the following: (1) the date that a written formal agreement regarding the persuasion poll is made between the person making the calls and the poll sponsor(s) or the sponsor(s)' agent; (2) the date of the 1000th call in the poll; and (3) the date of each 1000th additional call in the poll.

What to file: A disclosure statement (Part 7 of this form) and a copy of the script used in conducting the persuasion poll, and a copy of every question asked in the survey and every statement made to respondents in the survey.

What disclosure is required for the persuasion poll?

Any caller conducting a persuasion poll must, at the beginning of each call, (1) identify the person(s) making payments for or authorizing the call by stating "This is a paid political advertisement by [Name of person(s)];" and (2) identify the person making the call, if different from the sponsor, by stating "This call is conducted by [Name of person]." These disclosures must be spoken at the same volume and speed as the rest of the communication so as to be clearly audible by the call recipient and otherwise appropriately conveyed for the hearing impaired. These disclosures must be repeated upon the request of the call recipient.

IV. How do you determine the filing deadline if you meet the filing obligations of more than one of the sections described above?

For any expenditure, a person may be required to file reports under more than one section of the law. This form allows you to disclose various third-party spending through one form. While most of these filing obligations require you to report spending within 24 hours of making the expenditure, some of these requirements prescribe a longer time-frame to file your reports. If you are required to report expenditures under multiple requirements with differing filing deadlines, you must submit this form by the earliest deadline applicable in order for your filing to be considered timely.

V. May you fax or email the Third Party Disclosure Form to the Ethics Commission?

You may file the Third Party Disclosure Form by facsimile, email, postal mail, or in-person delivery (keep in mind that most of the above-referenced rules require 24-hour notification). You must attach a clear and legible copy of the communication.

While most of the above-referenced rules require a person to file one copy of the communication, section 1.161(b) regarding mass mailings requires two originals of the mass mailing.

Example: A filer pays for an electioneering communication for a candidate for the Board of Supervisors and meets the filing thresholds of Parts 4 and 6 of this form. Parts 4 and 6 each require the filer to provide a legible copy of the communication. The filer must complete both Parts 4 and 6, but needs only to provide only one copy of the communication.

Appendix D

San Francisco Ethics Commission
25 Van Ness, Suite 220
San Francisco, CA 94102
Phone: (415) 252-3100
Fax: (415) 252-3112
Email: ethics.commission@sfgov.org
Web: www.sfethics.org



For SFEC use

THIRD PARTY DISCLOSURE FORM REGARDING SAN FRANCISCO CANDIDATES (S.F. Campaign and Governmental Conduct Code §§ 1.134(c), 1.152(a)(3), 1.152(b)(3), 1.161(b), 1.161.5, and 1.160.5)

Part 1. Report Information

Date of this filing	Enter date of election
No. of pages (do not count pages with instructions)	
Report Number (Assign a unique identification number to each original filing. Label attached communication with same number.)	
<input type="checkbox"/> Amendment to Report Number (list report number below and explain reason for amendment in next row)	
Reason for amendment:	

Part 2. Filer Information

Name of Filer (if committee, enter committee name)	FPPC I.D. Number (if applicable)
Filer telephone number ()	
Filer street address, city, state and zip code	
Signature	
Name of signatory	Date signed

Part 3. Type of Filing (check all boxes that apply)

- ☐ Part 4---Section 1.134(c), 1.152(a)(3), or 1.152(b)(3) filing (\$5,000 expenditures)
☐ Part 5---Section 1.161(b) filing (mass mailing)
☐ Part 6---Section 1.161.5 filing (electioneering communication)
☐ Part 7---Section 1.160.5 filing (persuasion poll)

Part 4. Report of Expenditures of \$5,000 or More Relating to a Candidate

In elections for City elective office other than Mayor or the Board of Supervisors, this part of the form is required only if at least one candidate for the City elective office has accepted the applicable voluntary expenditure ceiling and the Ethics Commission has not lifted the voluntary expenditure ceiling. In elections for Mayor or the Board of Supervisors, this form is required when the Ethics Commission has certified at least one candidate in the race as eligible to receive public funds.

a. Specify the race(s), including district number, in which cumulative expenditures of \$5,000 or more per candidate were made: _____

b. In the table below, provide information about all expenditures that aggregate to \$5,000 or more per candidate for City elective office.⁵

Candidate(s) identified in the communication	Type of Expenditure(s), i.e., independent expenditure, electioneering communication, or member communication	Indicate whether communication is intended to (1) support; or (2) oppose the candidate; or (3) be neutral.	Date of expenditure(s) (earlier of date goods/services are received or paid)	Cost apportioned to this candidate ⁶	Total amount of expenditures made related to this candidate for the election specified ⁷	Date the communication was distributed (the date the communication was broadcasted, mailed, disseminated, or passed out)

c. Attach a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video. Remember to label your communication so that it matches the Report Number that you assign to this form.

d. Please check this box if you are attaching additional pages and indicate the number of pages attached: ☐ No. of additional pages: []

⁵ "Expenditures" include independent expenditures, electioneering communications and member communications. You must include expenses that have been incurred but not yet paid. Do not count contributions made directly to candidates.

⁶ In this column, include all unreported expenditures relating to this candidate. For example, if you previously incurred \$2,000 in independent expenditures for Candidate Dhillon that were not reported because you had not met the \$5,000 threshold at that time, and then you incurred another \$4,000 for Candidate Dhillon, you must report in this column that you spent a cumulative amount of \$6,000 for this candidate. In this example, you would attach a copy of the communication(s) relating to the \$2,000 and \$6,000 expenditures.

⁷ In this column, report the sum of all previously reported amounts and the amount currently being reported.

Appendix D

Part 5. Itemized Disclosure Statement for Mass Mailings

a. Describe the mass mailing by completing the table below.

Title or description of mass mailing:	
Date of mass mailing:	
Total cost of mass mailing:	
Number of pieces mailed:	

b. Please provide the following information in the table below:

- The name, address (including street, city, and zip code) of each vendor
- The services or items provided by the vendor
- The cost of each service or item provided by the vendor

Name of Vendor	Service or Item Provided	Cost of Each Service or Item
	<input type="checkbox"/> photography <input type="checkbox"/> design (which may include graphics, text, layout, proofs) <input type="checkbox"/> production (which may include paper, printing, photocopying) <input type="checkbox"/> distribution (which may include mail house, folding, stuffing, sorting, labels, mailing lists) <input type="checkbox"/> postage (which may include US postage, other delivery, messenger, courier) <input type="checkbox"/> other _____	<input type="checkbox"/> Check box if this is an estimated cost
	<input type="checkbox"/> photography <input type="checkbox"/> design (which may include graphics, text, layout, proofs) <input type="checkbox"/> production (which may include paper, printing, photocopying) <input type="checkbox"/> distribution (which may include mail house, folding, stuffing, sorting, labels, mailing lists) <input type="checkbox"/> postage (which may include US postage, other delivery, messenger, courier) <input type="checkbox"/> other _____	<input type="checkbox"/> Check box if this is an estimated cost
	<input type="checkbox"/> photography <input type="checkbox"/> design (which may include graphics, text, layout, proofs) <input type="checkbox"/> production (which may include paper, printing, photocopying) <input type="checkbox"/> distribution (which may include mail house, folding, stuffing, sorting, labels, mailing lists) <input type="checkbox"/> postage (which may include US postage, other delivery, messenger, courier) <input type="checkbox"/> other _____	<input type="checkbox"/> Check box if this is an estimated cost

c. Attach two of the original pieces of the mass mailing. Remember to label your mass mailing so that it matches the Report Number that you assign to this form.

d. Please check this box if you are attaching additional pages and indicate the number of pages attached: ☐ No. of additional pages: []

Part 6. Itemized Disclosure Statement for Electioneering Communications

a. Complete Schedule A below.

Schedule A: Information about electioneering communication	
1.	Name of any individual exercising/ sharing direction and control over filer:
2.	Total amount of payments made for electioneering communications during calendar year:
3.	Total amount of payments made that are itemized on this statement (please provide information regarding these payments on Schedule B):
4.	Total amount of all payments received to date for electioneering communications during the calendar year:
5.	Total amount of payments received that are itemized on this statement (please provide information regarding these previously unreported payments of \$100 or more on Schedule C):
6.	Name and Office of Candidate(s) or City Elective Officer identified in this Electioneering Communication:
7.	Date Electioneering Communication was distributed:

b. Complete Schedule B below to provide information regarding payment(s) disclosed in **Item 3** above (Schedule A), which have not been reported on a previously filed itemized disclosure statement.

Schedule B: Information regarding payments made for electioneering communications (from line 3 on Schedule A)

	(i)	(ii)	(iii)	(v)
	Date Payment Made	Full Name & Street Address of Person to Whom Payment was Made	Amount of Payment	Description of Consideration for Which Payment was Made
a.			<input type="checkbox"/> Check box if this is an estimated cost	
b.			<input type="checkbox"/> Check box if this is an estimated cost	
c.			<input type="checkbox"/> Check box if this is an estimated cost	

Check box if additional pages of Schedule B are used: ☐

Appendix D

Part 6. Itemized Disclosure Statement for Electioneering Communications (continued)

c. Complete Schedule C below to provide information regarding payment(s) disclosed in **Item 5 above** (Schedule A), which have not been reported on a previously filed itemized disclosure statement.

Schedule C: Information regarding previously unreported payments of \$100 or more that the filer received from another person were used for making the electioneering communications (from line 5 on Schedule A)

	(i)	(ii)	(iii)	(iv)	(v)
	Date Payment Received	Amount/Value of Payment Received	Full Name, Street Address, City, State and Zip Code of Person From Whom Filer Received Payment(s)	Occupation and Employer of Person Identified in Column (iii), or, if the Person is Self-Employed, the Name of the Person's Business	Cumulative Amount of Payments Received From Person Identified in Column (iii) During Calendar Year
a.					
b.					
c.					

Check box if additional pages of Schedule C are used: ☐

d. Attach a legible copy, or a transcript if in spoken form, of the electioneering communication. Remember to label your communication so that it matches the Report Number that you assign to this form.

Part 7. Itemized Disclosure Statement for Persuasion Polls

a. Provide information regarding each person who authorized, administered or made payments for the persuasion poll

Full Name	Street Address	City	State	Zip Code	Email	Telephone Number

b. Provide information regarding each person who shared or exercised direction and control over the person(s) named in (a) above

Name of Person Making Payment	Street Address	City	State	Zip Code	Occupation and Employer (If self employed, name of business.)	Date Payment Received	Amount of Payment	Cumulative Amount Received

c. Provide information regarding person(s) who made payments of \$100 or more to the person(s) named in (a) or (b) above

Full Name	Street Address	City	State	Zip Code	Email	Telephone Number

d. Provide information about the Persuasion Poll

Disclosure date: ____ / ____ / ____

Please check below to indicate the applicable type of disclosure date.

- ☐ The date that a written formal agreement regarding the persuasion poll was made between the person making the calls and the poll's sponsor or the sponsor's agent
- ☐ The date of the 1,000th call in the persuasion poll
- ☐ The date of each 1,000th additional call in the persuasion poll

The dates during which the persuasion poll was conducted: ____ / ____ / ____ to ____ / ____ / ____

The persuasion poll was conducted in relation to the:

- ☐ City wide election of _____ or
Name of Office
- ☐ District _____ election for member of the Board of Supervisors
District #

Part 7. Itemized Disclosure Statement for Persuasion Polls (continued)

Please include the following information:

- For each day, the number of calls attempted to households in the City and County of San Francisco if the election is a City-wide election, or the number of calls to households in the district if the election is a district election
- For each day, the number of individuals contacted and the number of messages left in households in the City and County of San Francisco if the election is a City-wide election, or the number of individuals contacted and the number of messages left in households in the district if the election is a district election

Date	Number of calls attempted	Number of individuals contacted	Number of messages left

e. Attach the following communications to this form. Remember to label your communications so that they match the Report Number that you assign to this form.

- ☐ A legible copy of the script used in conducting the persuasion poll and
- ☐ A copy of every question asked and every statement made in the persuasion poll

f. Please check this box if you are attaching additional pages and indicate the number of pages attached: ☐ No. of additional pages: []



**EXAMPLES OF MASS MAILER DISCLAIMERS FOR THIRD-PARTY COMMITTEES
THAT ARE PRIMARILY FORMED TO SUPPORT OR OPPOSE A CANDIDATE**

Example A: current CFRO/state law (14 point font):

Notice to Voters (Required by City and County of San Francisco)
This mailing is not authorized or approved by any candidate for City and County
office, a committee controlled by such candidate, or by any election official.
It is paid for by the Committee Supporting Candidate X for Supervisor 2016,
Major Funding By Donor 1 and Donor 2. (ID#1234567)
12345 67th Avenue, Suite 89, San Francisco, CA 94100
Total Cost of this mailing is \$1,000.

Example B: current state law (10 point font):

Paid for by the Committee Supporting Candidate X for Supervisor 2016, Major Funding By Donor 1 and Donor 2
12345 67th Avenue, Suite 89, San Francisco, CA 94100
Not authorized by a candidate or a committee controlled by a candidate.

Example C: proposal (12 point font):

Paid for by the Committee Supporting Candidate X for Supervisor 2016,
Major Funding By Donor 1 and Donor 2
12345 67th Avenue, Suite 89, San Francisco, CA 94100
Not authorized by a candidate or a committee controlled by a candidate.
Financial disclosures are available at sfethics.org.





Political Advertising Disclaimers

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2. Independent Expenditure Ads on Candidates

→ General purpose committees provide a disclaimer that must include, unless otherwise noted:

"Paid for by committee name" and "Not authorized by the candidate or a committee controlled by the candidate"

Examples:

- "This call was paid for by ABC Trade Association and was not authorized by Senator Jones"
- "This ad was paid for by Susan Johnson and was not authorized by a candidate or committee controlled by a candidate"

→ Primarily formed committees for or against a candidate must add an additional disclaimer that lists \$50,000 donors.

Examples:

- "Paid for by Citizens Against Senator Smith, major funding by International Workers Association and California Insurance Committee. This ad was not authorized by Senator Smith."

The following disclaimers apply to ads that expressly advocate support or opposition of a candidate

Communication	Manner of Display
All mass mailings (more than 200) (see note)	<ul style="list-style-type: none">• Committee name/address (on file with Forms 410 or 461) on outside of mailing in no less than 10 pt type/contrasting print color• An insert in the mailing must also state that the ad was not authorized by the candidate or a committee controlled by the candidate
Telephone calls (more than 200) - made by vendors ("robo" calls) or paid individuals	<ul style="list-style-type: none">• Disclaimer must state that the call is "paid for by" committee name• Must be at least 3 seconds either at the beginning or end of the call
Radio	<ul style="list-style-type: none">• Must be at least 3 seconds either at beginning or end of the ad
Television	<ul style="list-style-type: none">• Both written & spoken at the beginning or end of ad• Not less than 4 seconds• Size & contrasting color must be legible to average viewer• Exception - no spoken disclosure required if written statement is shown for at least 5 seconds on a 30 second broadcast or 10 seconds on 60 second broadcast

Independent Expenditures - Candidate Ads

Communication	Manner of Display
Electronic Media 1. Websites, blast emails and Facebook posts 2. Ads of limited size (micro bar, button ad, ads limited to 500 characters or less) 3. SMS texts 4. Electronic ads sent in an audio format 5. Electronic ads sent in a video format	<ol style="list-style-type: none"> 1. Disclaimer statement must be in the same font size as majority of text and displayed conspicuously near the ad 2. Ad must provide disclaimer via rollover, link, or other connection to website with the disclaimer 3. Include the committee ID number and if technically possible link to the committee's campaign statement on Secretary of State's website 4. Same requirements as for radio ads above 5. Same requirements as for television ads above
Newspaper ads	<ul style="list-style-type: none"> • 10 pt type in contrasting color • Also check the Elections Code
Yard Signs (more than 200) Billboards	<ul style="list-style-type: none"> • 5% of height of advertisement in contrasting color
Door hangers, flyers, posters, and oversized campaign buttons and bumper stickers (buttons 10" across or larger and stickers 60 sq inches or larger) (all more than 200)	<ul style="list-style-type: none"> • 10 pt type in contrasting color

Note: Two display rules exist for mass mailings. A mass mailing must have the committee name/address on the outside of an envelope in 6 pt type; while the manner of display for the ad disclaimer requires the committee name in no less than 10 pt type. Often a one-page mailer combines the display rules with both the committee name and address in no less than 10 pt type although the address may be at 6 pt type.

The information on this chart does not carry the force of law. If there are any discrepancies between the chart and the Act or its corresponding regulations and opinions, the Act and its regulations and opinions will control.

References: Government Code Sections: 82031, 84305, 84310, 84506, 84506.5, 84507, 84509.
 Title 2 Regulations: 18225, 18435, 18440, 18450.1, 18450.4, 18450.5.

San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220

San Francisco, CA 94102

Ethics.commission@sfgov.org

Commissioners:

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We are writing to express our appreciation for the diligent staff work and outreach, particularly by Deputy Director Jesse Minardi, regarding contemplated changes in the San Francisco Campaign Finance Reform Act.

As individuals and as the Friends of Ethics, we have maintained an ongoing interest and involvement in the ability of the San Francisco Ethics Commission to provide a system that assures the public that our city government is conducted with a strong understanding and commitment to ethics, and that the same also be true for the campaigns for candidates and ballot measures.

The staff's current outreach and diligence marks a new level in transparency at the Commission and a seriousness in its consideration of responses from the public.

At this time, with full respect, we request that the Commission continue this process for at least another month and immediately amend the agenda for the coming meeting to allow for public comment on the scope of the current review. We note that we are unaware of any public notice at the Commission that this process would be underway or any opportunity for public comment on the scope of this review.

We are deeply concerned for several reasons.

First, it is unlikely that there can be any proposal from the Ethics Commission to the Board other than this current process. The timeline for the Commission to deliberate, vote, forward recommended changes, and then for the Board to act through its committees forecloses any other action before the November 2015 election.

This makes it imperative that any changes to the law carefully evaluate and consider a range of issues and needs in order to bring the San Francisco Campaign Finance Reform Ordinance forward to better meet a changed political environment and a clear shift in the capacity to fully inform the public. Unfortunately, the current proposal does not meet that standard.

We note that the November 2015 election will decide on the city's most important leaders, including the mayor, city attorney and district attorney. It also appears at this time that there may be ballot measures that set the parameters on city policy that will have a major impact for years to come.

Prior Commission Revisions Omitted in the current proposal

Commission minutes from 2012, 2013 and 2014 include votes on specific language the Commission sought to have included in future versions of the Campaign Finance Reform Ordinance as well as issues that the Commission wanted to consider in a future revision.

1. An amendment to require reporting and disclosure by “draft committees” created “to support the qualification or election of an identifiable person to City elective office who has not qualified as a candidate.” (November 2012)
2. An amendment to increase the prohibition on contributions from contractors from six months to 12 months. (May 2013)
3. Consideration of prohibition on lobbyists contributing to campaigns. (August 2014)
4. Consideration of Proposition J provisions omitted in subsequent Proposition E reforms (August 2014)
5. Consideration of reducing reporting threshold from \$5,000 to \$1,000 for independent expenditures by committees or persons on behalf of a candidate or measure.
6. Consideration of making language mandatory in contribution forms for candidates and contributors that contractors are prohibited from making contributions.

Provisions Adopted in other California jurisdictions but not part of this reform

1. Penalty for violations may include debarment from consideration of a city approval, including contractors.
2. Private right of action to enforce provisions of the law
3. Prohibition on contributions from an entity that is receiving a financial benefit from the city, including variances and other authority

Provisions Urged by Friends of Ethics

- a. Prohibition on contributions from individuals or entities facing enforcement actions by the City Attorney, District Attorney, or any commission or city department under the jurisdiction of the mayor, city attorney or district attorney
- b. Either a prohibition or adoption of the same prohibitions and cap as candidate committees for a committee controlled by an officeholder, including General Purpose Committees or Ballot Measure Committees.
- c. Prohibition on contributions from those seeking city approvals that have a financial benefit of more than \$100,000, including variances, tax benefits, etc.
- d. Disclosure of expenditures and contributions made on Election Day or within one week following the Election prior to the certification of the election results.
- e. Require disclosure by candidates of the members of a finance or advisory committee involved in fundraising
- f. Require disclosure by city officers if they are involved in fundraising for candidates other than themselves, including for ballot measures.
- g. Transfer filing for Slate Mailer Organizations from the Elections Department to the Ethics Commission as authorized by the FPPC

- h. Proposed revision should have an initial Findings and Determination referencing state and federal court decisions, the influence of independent expenditure committees and state committees operating in San Francisco campaigns and recommendations from the San Francisco Civil Grand Jury report on Ethics
- i. Continue requiring disclosures of vendor payments on a 24-hour basis.

Additional points specific to the staff proposals:

2. 1.104(l). Definition of electioneering communications. As noted in Comment 1 in the staff report comment appendix, a suggestion was made to exempt 501c3 fundraiser communications. There appears to be contrary to the purpose of electioneering communications and could create a loophole.

3. 1.162. (electioneering communication disclosure). Under the proposed amendments, supplemental disclosure reports would no longer provide vendor disclosure. Currently, they do so for mass mailing IE filings and electioneering communications. They are particularly essential for electioneering communications, since eliminating them from the reports wholly eliminates disclosure of who is paid for what in the generation of these types of communications unless a campaign committee happens to be making the expenditure. For non-committee entities that engage in this type of spending, a large loophole is created. The staff response to Comment 10 does not address this problem.

4. 1.163. (member communications). The proposal for member communication disclosures does not require disclosure of previously undisclosed received contributions. The staff report goes to great lengths to achieve consistency with the 496 form for IE reporting but then ignores that the 496 requires contribution disclosure. I think's the staff response in Comment 11 is problematic.

5. 1.161. Campaign communication disclaimers do not require ID#. This is an easy, prudent fix.

6. Robocalls. Currently, all robocalls distributed to 500 or more individuals require a disclaimer in SF, regardless of the cost of the call or whether a committee paid for it or not. Under the new rules, robo-calls would be required to provide a disclaimer only if made by a committee. This may create some potential for abuse to avoid disclosing to the public who pays for the robocall. Question; Does state law always require robo-calls to disclose who paid for them in a disclaimer or no?

7. SMO filing officer issue. Here's the FPPC advice letter (run search of "Luby" on this page: <http://www.fppc.ca.gov/index.php?id=545>) Citireport piece on this issue (see #5): <http://www.citireport.com/2012/10/a-primer-for-closing-%E2%80%99Csoft-money%E2%80%99D-disclosure-loopholes-in-san-francisco-2/>

Additional question: The Ethics Deputy is proposing that spending on ballot measure communications that mention candidates triggers an electioneering communication, but only if the spending on the candidate is \$1,000 or more. How is valuation

determined? Normally, if an IE, the entire cost of the communication would be disclosed as for or against the measure. Is the calculation regarding candidate electioneering communication an overlapping analysis that differs from the IE valuation?

Respectfully,

Larry Bush for Friends of Ethics

(including Eileen Hansen, Robert Planthold, Charles Marsteller, Marc Saloman, and five others).



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

AMIEENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Memorandum

To: Members, Ethics Commission
From: John St. Croix, Executive Director
Re: Fiscal Year 2015/2016 Budget Request
Date: January 21, 2015

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The Mayor's office has provided the customary budget instructions to all City departments. The Mayor's Budget Office has projected a \$100 million General Fund shortfall for FY 2015-16 of \$8.6 billion, and a \$17 million shortfall for FY 2016/17, also projected to be \$8.6 billion, based on current operations and staffing levels and estimated revenues. The budget submission target requested for all departments has no reduction from the current year's budget for FY 2015/16 and a contingency one percent reduction for FY 2016/17.

Our budget in the current fiscal year breaks down as follows:

Operating budget	\$2,635,384
<u>Election Campaign Fund</u>	<u>1,948,970</u>
	\$4,584,354

A one percent reduction would amount to \$25,401 in FY 2016/17. While the Mayor's budget instructions for the upcoming fiscal period would leave us with the same staff makeup as the current year, I am recommending that we request funding for the vacant Investigator position, funding for two additional Auditors and slight increases for three existing positions (based on enhanced responsibilities). Additionally, for the second year of the cycle, we need to request an additional \$40,000 to cover the costs with our vendor for migrating over 3,000 Form 700 financial disclosure filers from paper filing with their individual departments to electronic filing with the Ethics Commission.

This translates into an increase of \$334,486 for a total budget request of \$2,960,140 for FY 15/16 and \$3,000,014 for FY 16/17 for a final increase of 12% of the current fiscal year operating budget.

For your information, the balance in the Election Campaign Fund as of today is \$6,321,009. Projected disbursement in the upcoming Fiscal Year for the 2015 Board of

Supervisors Race in District 3 is \$106,564 and the 2015 Mayoral race is \$485,294 for a total of \$591,858. A deposit is made into the fund at the beginning of each fiscal year of about \$2 million. The fund is capped at \$7.5 million.

The historical funding of the Ethics Commission is as follows:

FY 94 – 95	157,000
FY 95 - 96	261,000
FY 96 - 97	313,274
FY 97 - 98	394,184
FY 98 - 99	475,646
FY 99 - 00	610,931
FY 00 - 01	727,787
FY 01 - 02	877,740
FY 02 – 03	1,156,295
FY 03 - 04	909,518
FY 04 - 05	1,052,389
FY 05 – 06	1,382,441
FY 06 – 07	8,416,109 (1,711,835 non-grant funding)*
FY 07 – 08	3,592,078 (2,261,877 non-grant funding)**
FY 08 - 09	5,453,874 (2,241,818 non-grant funding)
FY 09 - 10	6,011,566 (2,283,368 non-grant funding)***
FY 10 – 11	4,188,720 (2,212,226 non-grant funding)****
FY 11 – 12	4,269,979 (2,259,979 non-grant funding)*****
FY 12 – 13	4,155,547 (55,547 non-grant funding)*****
FY 13 – 14	4,531,950 (2,431,950 non-grant funding)
FY 14 – 15	4,584,354 (2,625,384 non-grant funding)

*Includes \$6,704,274 front-loaded funding for Mayoral Election Campaign Fund

**Includes \$1,358,747 annual set-aside for the Election Campaign Fund

***Does not include \$85,205 mid-year budget reduction; includes \$1,783,858 restoration of funds previously taken from Election Campaign Fund

****Does not include \$53,256 mid-year reduction

*****Does not include \$4,079,107 in repayments to Election Campaign Fund from prior-year loans to the General Fund

*****Figures are from the Annual Appropriation Ordinance – the remainder of the Commission’s operating budget came from the Election Campaign Fund (ECF). As of June 30, 2012, the ECF had \$7,713,722; the City took back \$4 million and gave back to the ECF \$1,899,308. Thus, at the beginning of FY 12-13, the ECF had \$5,613,030. Another \$2 million was taken back in FY 13-14, but the actual transaction was posted back to June 2012 for the FY 2012-13 Fiscal Year



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of January 26, 2015.

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BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

1. Budget/Staffing.

The Mayor's December budget briefing indicated that departments will not be asked to make cuts in their existing budgets in next year's budget submissions. The Commission will consider its budget proposal at this meeting.

During the spring 2015 school semester, the Ethics Commission is hosting a total of seven interns, externs, and fellows.

- Mara Liwag is a YouthWorks intern and a senior at Sacred Heart Cathedral Preparatory; she is assisting staff with administrative tasks.
- Aidan Lukomnik, a Coro Fellow, is cataloging the Commission's formal and informal mandates.
- Kristen Wolslegel and Jeffrey Thorsby are candidates in the Master of Public Administration program at San Francisco State University; they are analyzing the Commission's open data.
- Sally Hong, who enjoyed translating the City's recently-amended lobbying ordinance into plain English fact sheets this past fall, has returned as an extern in her final semester of law school; she will be working with Enforcement staff on lobbyist, ethics and campaign issues.
- Lastly, we expect that two students from within the U.C. Hastings' Center for State and Local Government law will be reviewing and analyzing the Commission's enforcement procedures.

2. Investigation and enforcement program.

As of January 20, 2015, there were 19 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	13
Conflict of Interest	5
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	0
Sunshine Ordinance	1
TOTAL	19

3. Campaign finance disclosure program.

a. Filing deadline. The next filing is February 2, 2015 for the Second Semi-annual statement, which covers the reporting period ending December 31, 2014. In the interim, staff receives and processes campaign statements for this and other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations.

b. Collection of late filing fees and contribution forfeitures. In calendar year 2014, the Commission collected a total of \$16,975 in campaign finance late fees and forfeitures. In the fiscal year 2014 -2015, as of December 31, 2014, the Commission collected \$6,469 in outstanding late fees and forfeitures. As of December 31, 2014, the Commission's outstanding late fees and forfeitures were \$33,283, of which \$13,260 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR as of June 30, 2014:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	\$2,658.90	\$2,658.90	2,658.90
3	Chris Jackson For Community College Board	1347066	Chris Jackson	7/12/13	\$6,600.94	\$6,600.94	\$6,600.94
						TOTAL	\$13,260

4. Revenues report.

For fiscal year 2014-2015, the Commission was budgeted to generate \$70,000 in revenues. As of January 20, 2015, the Commission received \$85,455 or 122% of anticipated revenues for the year.

Source	Budgeted Amount FY 14-15	Receipts
Lobbyist Fees	\$37,000	\$55,000
Other Ethics General	\$1,000	\$6
Campaign Finance Fines	\$23,000	\$6,469
Campaign Consultant Fees	\$5,000	\$11,550
Lobbyist Fines	\$1,000	\$0
Statements of Economic Interests Fines	\$1,000	\$1,320

Source	Budgeted Amount FY 14-15	Receipts
Other Ethics Fines	\$1,000	\$9,500
Campaign Consultant Fines	\$1,000	\$1,610
Unallocated	\$0	\$0
Total	\$70,000	\$85,455

5. Lobbyist program.

As of January 20, 2015, 135 individual lobbyists were registered with the Commission. Total revenues collected to date for the 2014-2015 fiscal year amount to \$55,000 in lobbyist registration fees. The re-registration deadline for lobbyists to continue their registration into 2015 is February 2, 2015; and the filing deadline for the next lobbyist disclosure statement is February 17, 2015.

6. Campaign Consultant program.

As of January 9, 2015, 16 campaign consultants were registered with the Commission. \$11,550 in registration fees and \$1,610 in fines have been collected so far during the 2014-2015 fiscal year.

The next campaign consultant quarterly report deadline is Monday, March 16, 2014, covering the reporting period from December 1, 2014 through February 28, 2015. Staff will send reminders to all active campaign consultants prior to the deadline.

7. Statements of Economic Interests.

In preparation for the 2015 Form 700 filing requirements, instructions will be sent to Department Heads by January 31, 2015. Department Heads and Filing Officers have been notified that the instructions are forthcoming, and that trainings are scheduled for February 4 and March 4, 2015.

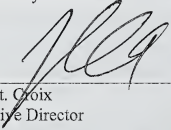
8. Outreach and Education.

For the calendar year 2015, staff has scheduled 14 workshops to provide training to campaign committees of their obligations under state and local campaign finance laws. Of the 14 workshops, five will cover requirements pertaining to candidates seeking office in November 2015, five will cover requirements pertaining to ballot measure committees and four will cover requirements pertaining to general purpose committees (also referred to as political action committees). In addition, to the 14 scheduled training workshops, staff will schedule additional training and/or conduct one-on-one training as needed. Separately, on an on-going basis staff provides training to candidates and campaign treasurers on using the Commission's online electronic filing system, SFEDS.

Additionally, the Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

Department of Building Inspection SIA Training
Controller's Office SIA Training
Department on the Environment SIA Training
Governmental Ethics Ordinance Training for City Employees
Medical Examiner's Office SIA Training
Non-Candidate Recipient Committee Training
Public Utilities Commission SIA Training
SIA Template Language Training

Respectfully submitted,



John St. Croix
Executive Director

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[DRAFT]
Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 26, 2015
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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I. Call to order and roll call.

Chairperson Hur called the meeting to order at 5:33 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Paul Renne, Vice-Chairperson; Brett Andrews, Commissioner; Beverly Hayon, Commissioner; Peter Keane, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Jesse Mainardi, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Joshua White, Deputy City Attorney (DCA); Andrew Shen, DCA.

OTHERS PRESENT: Peter Warfield; Allen Grossman; Larry Bush; Anita Mayo, Pillsbury Winthrop Shaw Pittman; Robert van Ravenswaay; Jonathan Mintzer, Sutton Law Firm; Elli Abdoli, Nielsen Merksamer; Kevin Heneghan; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Show Cause Hearing – Ethics Complaint No. 01-140107, and supporting documents;
- Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance;
- Sunshine Ordinance, Chapter 67 of San Francisco Administrative Code;
- Staff Memorandum, including Exhibits, re: Proposed Amendments to the Campaign Finance Reform Ordinance, dated January 16, 2015;
- Letter from Larry Bush for Friends of Ethics;
- Letter from James Sutton, Sutton Law Firm, re: Proposed Amendments to San Francisco Campaign Finance Reform Ordinance, dated January 23, 2015;
- Letter from Nancy Warren, Vice President – Legislation, California Political Treasurers Association, and Principal of Warren & Associates, dated January 25, 2015;
- Staff Memorandum re: Fiscal Year 2015/2016 Budget Request, dated January 21, 2015;
- Draft Minutes of the Ethics Commission's Special Meeting of December 16, 2014;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

A member of the public stated that he heard a recording of Commission Keane praising a man for the successful prosecution of a Sunshine matter. He repeated Commissioner Keane's statements and asked how everyone else who is unsuccessful feels knowing they are not competent enough to pursue a successful ethics complaint. He asked whether the Commission wants an Ethics complaint to be the most exclusive complaint in town. He stated that the public wants decency and fairness.

Commissioner Keane stated that his comments were not made with a degree of pride. He stated that he had a tremendous amount of admiration for a gentleman who persevered through a Kafkaesque nightmare. He stated that the process is shameful.

Peter Warfield stated that he made a complaint to the Sunshine Ordinance Task Force about ten years ago. He stated that after a Civil Grand Jury report, the Ethics Commission heard a complaint concerning the then-President of the Library Commission. He stated that the Commission was unable to "unseat" her and recommended to the Mayor that she lose her appointment. He stated that the Commission sent another letter to the Mayor a year later. He stated that about a year ago, the Mayor did not reappoint Jewelle Gomez or Lee Munson.

III. Discussion and possible action on matters submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance.

Executive Director St. Croix stated that, as this matter is being considered under Chapter Two of the Regulations, staff did not conduct an investigation and is not making a recommendation in this case. He stated that the Court of Appeals heard Mr. Grossman's arguments and made its ruling. He stated that the City continues to spend resources on this matter and respectfully asked the Commission to find there was no violation.

Chairperson Hur asked how the documents were withheld if he stated that he had never read them. Director St. Croix stated that he had discussed the matter with staff and the City Attorney's Office. He stated that he had accepted the documents as reviewed and did not look at them until the original lawsuit was filed.

Allen Grossman addressed the Commission's conflict. He stated that the Commission cannot hear this matter. He stated that Director St. Croix recognized the conflict issue because he previously proposed amending the Sunshine Regulations to exclude the handling of complaints made against Commission members, Director, and staff. He stated that the Court only considered one issue and there were two other violations from the Sunshine Ordinance Task Force, which remains to be enforced. He stated that the Director has failed to enforce Sunshine Orders and the trust given to the Commission to enforce public access has been broken. He stated that the Commission must repudiate Director St. Croix's actions or amend its by-laws to state that it will not enforce open government laws.

Commissioner Renne asked how Mr. Grossman could argue that Director St. Croix violated open government laws when the Court of Appeal ruled against Mr. Grossman on that question. Mr. Grossman conceded that the provision in the Ordinance is no longer enforceable. He stated that the matter involves two other violations, but that the Commission should not even be hearing this

case. Chairperson Hur asked Mr. Grossman what the other two violations were. Deputy Executive Director Mainardi referenced the Task Force's referral letter to the Commission from November 2013.

Public Comment:

A member of the public stated that he was gratified that Commissioner Keane recognized the obstacles in pursuing a violation of open government laws. He stated that the City Attorney turned over records to Mr. Grossman after he filed the lawsuit.

Peter Warfield stated that there are many conflicts and specifically noted that Commissioner Hayon had previously granted an extension for this matter. Mr. Warfield read the three violations and objected to Director St. Croix's statement that departments are not required to create a document.

Chairperson Hur asked the DCA whether there is a conflict in the Commission adjudicating this matter. DCA White stated that the Commission is not reviewing its own actions; it is reviewing what staff did. He stated that the City Attorney does not believe there is a conflict in this matter. He stated that, under the Charter, staff has the authority to conduct the department's day-to-day affairs. Commissioner Keane asked whether staff had the authority to defend itself in litigation without the permission of the Commission. DCA White says that in this instance, staff had the authority because the allegations made by Mr. Grossman did not involve the Commission and thus there was no obligation to seek the Commission's approval before defending itself in litigation.

Mr. Grossman disagreed with DCA White's statements. DCA White stated that Mr. Grossman raised this argument before the Court of Appeal and it was rejected. Chairperson Hur stated that the issue was adjudicated and the Court of Appeal did not find in Mr. Grossman's favor. He stated that the Court of Appeal also addressed the issue of whether the Commission was required to authorize the lawsuit.

Motion 15-01-26-01 (Renne/Hayon): Moved, seconded and passed (5-0) that the Ethics Commission find there is no basis to find that Executive Director St. Croix violated his obligations and that the Commission is bound by the finding of the Court of Appeals that his actions were consistent with San Francisco open government ordinances.

- IV. Discussion and possible action regarding the approval of proposed amendments to San Francisco Campaign Finance Reform Ordinance, which are intended to update and streamline certain reporting disclaimer requirements, as well as to repeal certain contribution limits.**

Motion 15-01-26-02 (Keane): Moved and not seconded that the Ethics Commission continue this item to the Commission's next meeting.

Commissioner Keane moved to continue the item. He stated that Mr. Mainardi did an excellent job, but that he has not digested everything in light of all of the other materials. Chairperson Hur stated that it would be useful for the Commission to have a discussion. Commissioner Hayon

stated that she would like to hear from the people who attended the meeting. Commissioners Renne and Andrews agreed. Commissioner Keane then proposed to add the item to the next meeting for any additional issues.

Deputy Executive Director Mainardi introduced the item and briefly outlined the three main proposals presented in staff's memorandum.

Decision Point 1 – repeal of two contribution limitations

Mr. Mainardi stated that, for the sake of clarity and by virtue of case law, staff has proposed the repeal of two provisions of the contribution limit sections - section 1.114(a)(2) and section 1.114(c).

Public Comment:

Larry Bush stated, on behalf of Friends of Ethics, that the Commission has never, as a body, decided to take up the issues addressed by staff's proposed amendments. He also stated that he had sent a memo to the Commission and none of the issues he raised was included in staff's draft.

Anita Mayo, from Pillsbury Winthrop Shaw Pittman, applauded staff's efforts to clean up the contribution limits, as it would conform with prevailing case law.

Chairperson Hur stated that these proposals seem clear and that the Commission should not have to deal with all CFRO changes in one meeting. He stated that if there are things the Commission has not addressed, then the Commission should address those, but it should not hold up all of the proposed changes.

Motion 15-01-26-03 (Renne/Keane): Moved, seconded and passed (5-0) that the the the Ethics Commission approve Decision Point 1 and repeal sections 1.114(a)(2) and 1.114(c) as set forth in Appendix A.

Decision Point 2 – consolidating, streamlining, and enhancing third-party disclosure

Deputy Executive Director Mainardi explained that the second set of amendments relates to disclosure requirements for third parties who are involved in supporting or opposing local candidates.

Chairperson Hur asked which proposal from pages 7-10 received the most negative feedback. Mr. Mainardi mentioned four criticisms from the Friends of Ethics letter. Commissioner Keane asked about the issue of member communications. Mr. Mainardi explained that it is difficult for some organizations, such as labor unions, to determine how much of each individual's membership dues is attributable to a particular mailer and that no jurisdiction at any level requires such disclosure of membership dues.

Public Comment:

Larry Bush discussed the four issues raised in his letter. He stated that non-profits are involved in ballot measure campaigns and that there should not be an exemption for 501(c)(3) organizations. He stated that his group wants disclosure of groups' membership. He also suggested adding a 24-hour reporting requirement for expenditures made on Election Day, as it is not the practice now.

Robert van Ravenswaay stated that he was on the Civil Grand Jury last year. He stated that the amendments need to say how they would further the purpose of the Ordinance. He also wondered how the changes would affect the datasets currently available on the Commission's website.

Mr. Mainardi stated that the proposed amendment language currently states how the amendments would further the purpose of the Ordinance. He also stated that the disclosure would be made on state forms and that they would be easier to read than they currently are and would be available electronically.

Johnathan Mintzer, Sutton Law Firm, stated that the firm had submitted a letter on Friday and urged the Commission to adopt the amendments without delay. He stated that the laws are currently complex and there is no reason to have multiple state and local disclosure requirements. He stated that the amendments would increase compliance and disclosure.

Ellie Abdoli, Nielsen Merksamer, stated that her firm represented a number of campaigns in San Francisco and that the firm supports the recommended changes. She stated that the amendments would also improve the database. She also stated that she did not hear objections to the content of staff's proposals, only that the Commission should do more. She stated that she supports the Commission doing more, but that it should clean up what is there now. She encouraged the Commission not to delay.

Kevin Heneghan stated that he has not had a chance to review the amendments line by line, but that there are times during an election cycle that he reviews a mail piece and there may be eight or nine filings for a mailing that costs about \$4,000. He stated that the Commission is just one step in the process to amend CFRO. The proposals would then need to move to a Board Committee, then the full Board, subject to the 30-day rule. He suggested that the Commission move forward.

Commissioner Keane expressed concern that there are a number of items that the Commission has discussed in the past that were not incorporated in the proposed changes. Mr. Bush stated that the Commission agreed to amend CFRO to increase the contractor contribution ban from six to twelve months. He stated that the Commission had also asked staff for an amendment to cover draft committees. He stated the Commission also discussed requiring specific language on contribution forms. Mr. Mainardi offered to go through the concerns raised by Mr. Bush and Commissioner Keane suggested not to do so, but to provide a memorandum with respect to those concerns for the next meeting. Mr. Mainardi agreed and stated that the Commission had passed draft committee rules but no one on the Board of Supervisors agreed to present it to the Board.

Chairperson Hur stated that he wanted to make sure that, if there is consensus among the Commissioners on the proposals, then the Commission should not postpone its vote. Commissioner Keane stated that he was satisfied with the discussion, with the understanding that the Commission will hear the matter on the next agenda for possible augmentation.

Commissioner Hayon asked about the deadline for the proposed changes, when taking the November 2015 election into consideration. DCA Shen stated that there is a timing issue, as there is a minimum of two months for the Board process after the Commission approves a final version of changes. He stated that would be the timing if the Board has no additional amendments. He stated if the Board has additional changes, then it would add another month or two. He suggested that the Commission approve changes soon. He stated that if the Commission approves changes during its February 2015 meeting, it would be a close call.

Motion 15-01-26-04 (Keane/Renne): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 2.

Decision Point 3 – Standardizing and improving disclaimer requirements

Deputy Executive Director Mainardi reviewed staff's proposals and referenced page 12 of staff's memo. He stated that staff's proposals looked to what is required in state law and then augmented it.

Public Comment:

A member of the public stated that anonymous donations are funding campaign communications and suggested the Commission require disclosure of anonymous donations.

Jonathan Mintzer stated that the proposed changes to the disclaimers will strengthen, not weaken the current system. He stated that there is currently overlapping regulation and the proposed changes would make compliance easier.

Commissioner Keane asked Mr. Mainardi to analyze the issue of anonymous donors. Mr. Mainardi referenced a portion of staff's memorandum devoted to this issue. He explained that there is no need for this type of disclosure at the local level, as the disclosure requirements are different from federal law, and that San Francisco has an existing electioneering communication rule that requires disclosure of donors.

DCA Shen stated that under state law, that there could not be anonymous donors, and that the issue is more applicable to federal elections. Mr. Heneghan stated that there is no way an anonymous donor could fund an independent expenditure in San Francisco or California. He stated that the forms mentioned in Decision Point 2 would be required to be filed within 24 hours of an expenditure being made and all contributors of \$100 or more would be disclosed.

Chairperson Hur asked why staff was proposing omitting the requirement to include the total cost of the mailer in the disclosure. Mr. Mainardi stated that staff proposed to make the same rules for all communications, and that rule only applied to mailers. He also stated that staff proposed that the disclosure include a reference to the Commission's website so that more

information would be provided. The Commissioners then discussed changes in the font size of disclaimers.

Motion 15-01-26-05 (Keane/Hayon): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 3.

Decision Point 4 – overall approval of the draft amendments

Public Comment:

Larry Bush commented on Decision Point 2. He stated he was sorry to see the vendor payments removed.

Commissioner Keane suggested that the issue be revisited during the next meeting. DCA Shen stated that the decision point summarizes technical changes that are already in the version presented to the Commission and public.

Motion 15-01-26-06 (Hayon/Keane): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 4.

[The Commission recessed at 7:48 PM and returned to open session at 7:59 PM.]

V. Discussion and possible action on Ethics Commission budget.

Executive Director St. Croix stated that there is no requirement that the Commission make any cuts this year. He stated that he would like to enhance the responsibilities of campaign finance staff, as there has been and will be more electronic filing. He stated that the responsibilities are more sophisticated and he would therefore like to alter the requirements for future positions. He stated that the request would fund the vacant investigator position and he hopes to get two new auditors. He stated that, if the Commission were to get the requested funding, staff would use its entire workspace and would need to look for a new office for Commission staff. He also stated that the Commission would like to get additional funds to pay for the migration of Forms 700 filed directly with departments, so that all 3000+ other employees' forms would be available through the Commission's website.

Commissioner Keane asked about the status of making the Commission's materials available in other languages. Director St. Croix stated that he is working with the City to address translations and that he does not know yet what the cost, if any, will be.

Commissioner Andrews asked whether the Commission staff would be required to be in a City-owned building. Director St. Croix stated that he doubted the City would provide rent where there is City space available. Commissioner Andrews asked to see an organization chart, with the proposed additional positions.

Chairperson Hur asked whether staff has checked to see if the NetFile contract is still a good deal and expressed concern that the Commission be able to keep a contract at a reasonable cost.

Chairperson Hur stated that he wanted to make sure that, if there is consensus among the Commissioners on the proposals, then the Commission should not postpone its vote. Commissioner Keane stated that he was satisfied with the discussion, with the understanding that the Commission will hear the matter on the next agenda for possible augmentation.

Commissioner Hayon asked about the deadline for the proposed changes, when taking the November 2015 election into consideration. DCA Shen stated that there is a timing issue, as there is a minimum of two months for the Board process after the Commission approves a final version of changes. He stated that would be the timing if the Board has no additional amendments. He stated if the Board has additional changes, then it would add another month or two. He suggested that the Commission approve changes soon. He stated that if the Commission approves changes during its February 2015 meeting, it would be a close call.

Motion 15-01-26-04 (Keane/Renne): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 2.

Decision Point 3 – Standardizing and improving disclaimer requirements

Deputy Executive Director Mainardi reviewed staff's proposals and referenced page 12 of staff's memo. He stated that staff's proposals looked to what is required in state law and then augmented it.

Public Comment:

A member of the public stated that anonymous donations are funding campaign communications and suggested the Commission require disclosure of anonymous donations.

Jonathan Mintzer stated that the proposed changes to the disclaimers will strengthen, not weaken the current system. He stated that there is currently overlapping regulation and the proposed changes would make compliance easier.

Commissioner Keane asked Mr. Mainardi to analyze the issue of anonymous donors. Mr. Mainardi referenced a portion of staff's memorandum devoted to this issue. He explained that there is no need for this type of disclosure at the local level, as the disclosure requirements are different from federal law, and that San Francisco has an existing electioneering communication rule that requires disclosure of donors.

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Chairperson Hur asked why staff was proposing omitting the requirement to include the total cost of the mailer in the disclosure. Mr. Mainardi stated that staff proposed to make the same rules for all communications, and that rule only applied to mailers. He also stated that staff proposed that the disclosure include a reference to the Commission's website so that more

information would be provided. The Commissioners then discussed changes in the font size of disclaimers.

Motion 15-01-26-05 (Keane/Hayon): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 3.

Decision Point 4 – overall approval of the draft amendments

Public Comment:

Larry Bush commented on Decision Point 2. He stated he was sorry to see the vendor payments removed.

Commissioner Keane suggested that the issue be revisited during the next meeting. DCA Shen stated that the decision point summarizes technical changes that are already in the version presented to the Commission and public.

Motion 15-01-26-06 (Hayon/Keane): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 4.

[The Commission recessed at 7:48 PM and returned to open session at 7:59 PM.]

V. Discussion and possible action on Ethics Commission budget.

Executive Director St. Croix stated that there is no requirement that the Commission make any cuts this year. He stated that he would like to enhance the responsibilities of campaign finance staff, as there has been and will be more electronic filing. He stated that the responsibilities are more sophisticated and he would therefore like to alter the requirements for future positions. He stated that the request would fund the vacant investigator position and he hopes to get two new auditors. He stated that, if the Commission were to get the requested funding, staff would use its entire workspace and would need to look for a new office for Commission staff. He also stated that the Commission would like to get additional funds to pay for the migration of Forms 700 filed directly with departments, so that all 3000+ other employees' forms would be available through the Commission's website.

Commissioner Keane asked about the status of making the Commission's materials available in other languages. Director St. Croix stated that he is working with the City to address translations and that he does not know yet what the cost, if any, will be.

Commissioner Andrews asked whether the Commission staff would be required to be in a City-owned building. Director St. Croix stated that he doubted the City would provide rent where there is City space available. Commissioner Andrews asked to see an organization chart, with the proposed additional positions.

Chairperson Hur asked whether staff has checked to see if the NetFile contract is still a good deal and expressed concern that the Commission be able to keep a contract at a reasonable cost.

Public Comment:

Larry Bush stated that he was delighted to hear that Forms 700 will be searchable. He stated that information on the forms is being missed since they are difficult to review. He suggested that the Commission use any additional funds for a part-time Commission Secretary.

Motion 15-01-26-07 (Hayon/Andrews) Moved, seconded and passed (5-0) that the Ethics Commission approve the budget request.

VI. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission.

Public Comment:

Larry Bush asked whether the complaints involved campaigns. Deputy Executive Director Mainardi read the agenda item.

Motion 15-01-26-08 (Renne/Keane) Moved, seconded and passed (5-0) that the Ethics Commission move into closed session.

The Commission entered closed session at 8:16 PM. All members of the public left the hearing room. The members of the Ethics Commission, Executive Director St. Croix, Deputy Executive Director Mainardi, DCA White, Kevin Heneghan, and Ethics Commission staff members Ms. Argumedo and Mr. Chatfield remained in the hearing room. Mr. Mainardi and Mr. Heneghan left the hearing room at 9:28 PM. Mr. Mainardi returned at 9:30 PM. The Commission returned to open session at 9:37 PM.

Motion 15-01-26-09 (Renne/Keane) Moved, seconded and passed (5-0) that the Ethics Commission keep confidential the matters discussed in closed session, except for an announcement.

Executive Director St. Croix made an announcement. He stated that, in the matter of Ethics Complaint Number 19-131115, the Ethics Commission made a determination that there is probable cause to believe eight violations of the California Government Code and two violations of the San Francisco Campaign and Governmental Conduct Code occurred (including California Government Code sections 84200(a) and 84104, and San Francisco Campaign and Governmental Conduct Code section 1.118); and that the Respondents, Lynette Sweet and Sweet for Supervisor 2010, committed them. Each Commissioner who participated in the decision to find probable cause certified on the record that he or she personally heard or read the testimony, reviewed the evidence, or otherwise reviewed the entire record of the proceedings. Executive Director St. Croix stated that the Respondents are presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

Public Comment:

None.

VII. Discussion and possible action on the minutes of the Commission's special meeting of December 16, 2014.

Public Comment:

None.

Motion 15-01-26-10 (Renne/Keane): Moved, seconded and passed (5-0) that the Ethics Commission adopt the minutes of the Commission meeting of December 16, 2014, as written.

VIII. Discussion of Executive Director's Report.

Executive Director St. Croix stated that BDR had obtained a judgment in favor of the City in the second case.

Public Comment:

None.

Commissioner Andrews asked about any surplus funds raised by the Commission during the fiscal year. Director St. Croix stated that the funds are returned to the City's general fund.

IX. Items for future meetings.

Public Comment:

None.

X. Adjournment.

Motion 15-01-26-11 (Hayon/Keane): Moved, seconded and passed (5-0) that the Ethics Commission adjourn.

Public Comment:

None.

The Ethics Commission adjourned the meeting at 9:44 PM.



Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

02-19-15P03:44 RC

February 23, 2015, 5:30 P.M.

and AGENDA

Room 400 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission. (Attachment: Email from Larry Bush.)
- III. Presentation by San Francisco State University students Kristen Wolslegel and Jeffrey Thorsby regarding their campaign finance data visualization project regarding the November 4, 2014 election. (Discussion.)
- IV. Discussion and possible action on public finance report. After each election cycle involving publicly-financed races, staff makes a report on execution of the public financing program for that election cycle. At this meeting, staff will present a report on the 2014 election cycle. (Attachment: draft 2014 Public Finance Report.)
- V. Discussion and possible action regarding a proposed amendment to Commission regulation 1.142-2, which would allow staff to implement an electronic filing system for candidates participating in the City's public financing program. (Attachment: Staff Memoranda including proposed amendment.)
- VI. Discussion and possible action regarding potential additional amendments to the San Francisco Campaign Finance Reform Ordinance. (Attachments: Staff Memoranda including attachments; Letter and Email from Friends of Ethics.)
- VII. Discussion and possible action regarding an amendment to the changes to the San Francisco Campaign Finance Reform Ordinance which were approved by the Commission at its January 26, 2015 meeting. The amendment imposes the same font size requirements for disclaimers on smaller written communications on both independent expenditures and electioneering communications. (Attachment: Staff Memoranda including proposed amendment.)
- VIII. Discussion with City Attorney's Office regarding potential litigation against local committees, including Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor, for violations of local campaign finance laws. Possible Closed Session. (Attachments: Letters from Charles H. Bell, Jr. and James R. Sutton)

- a. Public comment on all matters pertaining to Agenda Item VIII, including whether to meet in closed session.
- b. Vote on whether to assert attorney-client privilege and meet in closed session under California Government Code section 54956.9 and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation: San Francisco Campaign and Governmental Conduct Code section 1.114. (Action.)
- c. Conference with Legal Counsel: Anticipated litigation. (Discussion.)
Number of possible cases: 1
- d. If closed session is held, reconvene in open session.
- e. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation. (Discussion and possible action.)

Motion: The Ethics Commission moves (not) to disclose its closed session deliberations re: anticipated litigation.

- IX. Discussion and possible action on the minutes of the Commission's meeting of January 26, 2015. (Attachment: January 26, 2015 draft minutes.)
- X. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)
- XI. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- XII. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

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Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is accessible to persons using wheelchairs and other assistive mobility devices. Ramps are available at the Grove, Van Ness and McAllister entrances. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

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Mainardi, Jesse (ETH)

From: LARRY BUSH <sfwtrail@mac.com>
Sent: Monday, February 16, 2015 1:31 PM
To: St.Croix, John; Mainardi, Jesse (ETH); Benedict Y. Hur; Paul Renne; Peter Keane
Subject: FPPC action Feb. 19

President Hur, Commissioners, Staff

(Please share with all commissioners and make available publicly)

To date, the Ethics Commission staff has not provided public information to the Commission or others of important FPPC actions related to San Francisco's laws and enforcement.

In the interim, I will provide my own edited and annotated version based on their agenda. The current agenda is for their February 19 meeting: <http://www.fppc.ca.gov/agenda.php?view=current>

1. Archway Properties earlier was found to have laundered funds into the mayoral campaigns of Ed Lee and Phil Ting and was required to pay a fine of \$40,000. In addition, state law (and SF law) requires that campaigns that received laundered funds turn the money over to the state. The FPPC informs that the Phil Ting campaign now has paid into the state the amount of laundered funds it received. (Note: there is no mention that the Ed Lee campaign has turned over to the state the funds it received, nor is there a record that SF Ethics Commission has ever enforced this provision of SF law as the FPPC does at the state level. This remains an issue in considering appointment of a Commission Secretary).

2. Nicholas Josefowitz was fined \$692 for failing to file a Major Donor form for January 1, 2012-December 31, 2012. During the year, he contributed a total of \$29,225 including \$10,000 to the Mayor Ed Lee for San Francisco Committee, a general purpose committee that the mayor uses to bundle contributions otherwise prohibited and in amounts larger than the law otherwise permits. Josefowitz was elected to the BART Board in November 2014. Lee endorsed Josefowitz' opponent, James Fang, in that contest.

2. The FPPC proposes a new regulation regarding lobbyists contributions ending the exemption for use of a private home or office for fundraising without reporting the expense. Current rules exempt the fair costs of the use of a home or office for a fundraiser by a lobbyist, who otherwise are prohibited from contributing. The proposed rule eliminates the exemption. The value counts as a contribution, and the host can not be reimbursed for the cost to avoid report or facing the law's ban. The regulation applies as well if the host involves a firm that is owned in whole or in part by a lobbyist, and the lobbyist participates in the decision to contribute. (SF Ethics will take up the issue of a ban on lobbyist contributions at its February meeting, making this rule change directly relevant to that consideration).

3. SB 21 (Hill) was introduced on December 1, 2014 regarding gifts of travel by nonprofits to require that they disclose the names of donors responsible for funding the payments. The proposed law also applies to local elected officials (SF officials travel is often paid by nonprofits such as the Ron Conway Family Foundation).

4. In advice letters, the FPPC opines that discounted or free office rent for a district office that is not a government source is a "behest" payment and must be reported. In a second advice letter, the FPPC opines that an appointee to a state board must disqualify herself in a decision that affects her private employer, and that in some instances the private employer would be prohibited from a contract with the employee's agency (similar to the contract for the chair of the Treasure Island Development with SFHA where the Treasure Island

executive director was an SFHA commissioner and worked for the Treasure Island Dev. The FPPC opines in a third case that gifts of travel overseas to explore a potential sister city relationship does not constitute "official agency business" and so may not involve public funds.

**San Francisco
Ethics Commission**



25 Van Ness Avenue, Suite 220
San Francisco CA 94102
Phone 252-3100 Fax 252-3112

Report on

San Francisco's Limited

Public Financing Program

November 4, 2014 Board of Supervisors Election

San Francisco Ethics Commission

Benedict Y. Hur, Chairperson
Paul A. Renne, Vice-Chairperson
Brett Andrews, Commissioner
Beverly Hayon, Commissioner
Peter Keane, Commissioner
John St. Croix, Executive Director

Prepared by: Shaista Shaikh

REPORT ON
THE
PROGRESS OF THE
WORK OF THE
COMMISSIONERS OF THE
LAND OFFICE
FOR THE YEAR 1884

LONDON: PRINTED BY THE STATIONERY OFFICE, 1885.

BY THE COMMISSIONERS OF THE LAND OFFICE.

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Report of the Board of Supervisors Public Financing Program of 2014

This report is intended to satisfy the requirements set forth in Section 1.156 of the San Francisco Campaign and Governmental Conduct Code, which requires the San Francisco Ethics Commission (“Commission”) to produce a report following the November 2014 election stating:

- The amount of public funds disbursed to campaigns in the election;
- The number of candidates who received public funds;
- The number of nonparticipating candidates;
- The amount of qualified campaign expenditures made by all candidates in that election;
- The amount of independent expenditures made in connection with the election; and
- Other relevant information deemed useful by the Ethics Commission.

The data presented is based on information reported in campaign disclosure statements covering the period through December 31, 2014 and from the Commission’s record of public funds disbursements.

I. Introduction

San Francisco’s public financing program for candidates for the Board of Supervisors was adopted through a ballot measure (Proposition O) in November 2000. In 2006, the program was extended to include Mayoral candidates as well. The Commission administered the public financing program in elections for candidates for the Board of Supervisors beginning in 2002. Because no candidate for Mayor qualified for public funding in 2007, the Commission administered the public financing program in a Mayoral election for the first time in 2011.

With respect to the qualification thresholds, disbursement formula/amounts and expenditure ceilings, the program as it was administered in the 2012 and 2014 elections was significantly different from the program that was administered in prior years.¹ The public financing program provides candidates running for the Board of Supervisors or Mayor with partial public funding to fund their campaigns. The Commission developed the program with the intent that it would provide candidates a neutral source of additional funding, encourage more candidates to run for office, allow candidates to spend more time discussing the issues and spend less time fundraising, and encourage candidates to limit their spending.

¹ See Appendix for a complete overview of the requirements of the public financing program as it was implemented in 2014.

II. Supervisorial Candidates on the November 4, 2014 Ballot and the Amount of Public Funds Disbursed in the November 4, 2014 Election

A. Candidates Who Sought Office, Whether They Participated in the Public Financing Program and Whether They Were Elected to Office

There are eleven supervisorial districts in San Francisco. In 2014, supervisorial elections were held in the five even-numbered districts: Districts 2, 4, 6, 8 and 10. A total of 17 candidates in five districts appeared on the November 2014 ballot and two of these candidates qualified to receive public funds.

The two participants of the public financing program ran for office from District 10 and they were non-incumbent candidates. All of the supervisorial races in 2014 involved an incumbent and all of the incumbents were re-elected to office.

Table 1 below lists candidates for the Board of Supervisors whose names appeared on the November 4, 2014 ballot, whether they participated in the public financing program, and whether the candidates were elected to office.

Table 1: List of 2014 Supervisorial Candidates, Whether They Participated in the Public Financing Program, and Whether They Were Elected to Office²

Candidate	District	Participation Status (P=participating candidate; NP=non-participating candidate)	Whether candidate was elected or defeated
Mark Farrell	2	NP	Elected
Juan-Antonio Carballo	2	NP	Defeated
Katy Tang	4	NP	Elected
Jane Kim	6	NP	Elected
Michael Nulty	6	NP	Defeated
David Carlos Salaverry	6	NP	Defeated
Jamie Whitaker	6	NP	Defeated
Tom Wayne Basso	8	NP	Defeated
George Davis	8	NP	Defeated
John Nulty	8	NP	Defeated
Michael Petrelis	8	NP	Defeated
Scott Wiener	8	NP	Elected
Malia Cohen	10	NP	Elected
Ed Donaldson	10	NP	Defeated
Tony Kelly	10	P	Defeated
Shawn M. Richard	10	NP	Defeated
Marlene Tran	10	P	Defeated

² In prior years, staff's review of electronic filings did not capture activity that was less than \$5,000 because candidates were not required to file electronic statements unless their activity reached \$5,000. Beginning in 2013, all candidates who form a committee (i.e., reach \$1,000 in activity) must file electronic campaign statements. This report does not include data about fundraising and spending by candidates who raised and spent less than \$1,000.

B. The Amount of Public Funds Disbursed in 2014

A total of \$4,372,039 in the Election Campaign Fund was available for disbursement. Eligible candidates were able to receive up to a maximum amount of \$155,000 in public funds (or up to \$152,500 for an incumbent). Unlike the public financing programs of 2008, 2010, and 2011, the 2014 public financing program did not provide for a mechanism for candidates to receive additional public funding beyond the \$155,000 cap (\$152,500 for incumbents). The two eligible candidates received a total of \$194,710 in public funds, an average of \$97,355 per candidate.

Table 2 below provides a breakdown of the amount of public funds disbursed to each qualifying candidate. It also shows the amount of total funds (public plus private) that was received by each candidate, participating and non-participating.

Table 2: Amount of Public Funds Disbursed as Compared to Total Funds Available to Candidates³

Candidate	District	Amount of Public Funds Disbursed to Participating Candidates	Total Funds Available to Candidates (private funds plus public funds, if any)	Public Funds as a Percentage of Total Funds
Mark Farrell	2		\$396,000	n/a
Juan-Antonio Carballo	2		\$52,485	n/a
<i>District 2 Total</i>		\$0	\$448,485	n/a
Katy Tang	4		\$126,970	n/a
<i>District 4 Total</i>		\$0	\$126,970	n/a
Jane Kim	6		\$272,274	n/a
Michael Nulty	6		\$3,081	n/a
David Carlos Salaverry	6		\$2,396	n/a
Jamie Whitaker	6		\$3,339	n/a
<i>District 6 Total</i>		\$0	\$281,090	n/a
George Davis	8		\$1,200	n/a
John Nulty	8		\$1,714	n/a
Michael Petrelis	8		\$3,156	n/a
Scott Wiener	8		\$263,247	n/a
<i>District 8 Total</i>		\$0	\$269,317	n/a
Malia Cohen	10		\$323,859	n/a
Ed Donaldson	10		\$21,637	n/a
Tony Kelly	10	\$135,644	\$235,928	57%
Marlene Tran	10	\$59,066	\$91,658	64%
<i>District 10 Total</i>		\$194,710	\$673,082	29%
<i>Total</i>		\$194,710	\$1,798,943	11%

³ Total funds in this table include total monetary contributions, loans, in-kind contributions, public funds and candidates' personal funds used for campaign purposes.

Public grants represented 29 percent of the total funds (public and private) that were available to all candidates in the District 10 race.

III. Candidate Spending

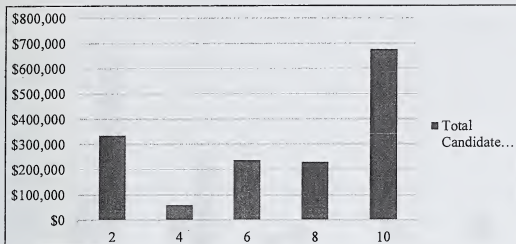
In 2014, candidate spending totaled \$1,542,751. This figure does not include spending by non-candidates. Table 3 below lists the amounts spent by candidates in 2014. The table also shows the highest level of a candidate's Individual Expenditure Ceiling, if the candidate was publicly financed. Publicly financed candidates were required to limit their expenditures to the amount of their Individual Expenditure Ceiling, which began at \$250,000 and was raised by the Ethics Commission based on the highest level of Total Supportive Funds of any opponent of a publicly financed candidate plus the Total Opposition Spending against such publicly financed candidate. Expenditure data includes both paid expenditures and debt.

Table 3: Candidate Spending in 2014

Candidate	District	Highest Level of Candidate's Individual Expenditure Ceiling	Total Expenditures Incurred
Mark Farrell	2		\$283,380
Juan-Antonio Carballo	2		\$52,535
<i>District 2 Total</i>			\$335,916
Katy Tang	4		\$60,777
<i>District 4 Total</i>			\$60,777
Jane Kim	6		\$229,926
Michael Nulty	6		\$3,109
David Carlos Salaverry	6		\$1,844
Jamie Whitaker	6		\$3,339
<i>District 6 Total</i>			\$238,218
George Davis	8		\$1,200
John Nulty	8		\$1,854
Michael Petrelis	8		\$2,347
Scott Wiener	8		\$225,599
<i>District 8 Total</i>			\$231,000
Malia Cohen	10		\$341,551
Ed Donaldson	10		\$21,238
Tony Kelly	10	\$320,000	\$231,343
Marlene Tran	10	\$320,000	\$82,709
<i>District 10 Total</i>			\$676,841
<i>Total</i>			\$1,542,751

The chart below shows total candidate spending by district.

Chart 1: Total Candidate Spending in 2014



IV. Spending by Third Parties

In 2014, third parties were required to report independent expenditures, member communications, and electioneering communications on the Commission's Third Party Disclosure Form. Third party spending regarding Supervisorial candidates in the November 2014 election as disclosed on the Third Party Disclosure Form totaled \$96,610 (\$76,326 in spending was considered to be neutral, \$20,284 was considered to be supportive spending and there was no opposition spending).⁴

The table below summarizes the data reported on the Third Party Disclosure Form related to the candidates.

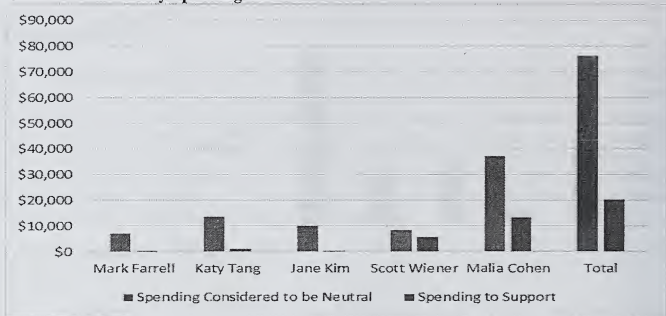
Table 4: Third Party Spending in 2014

Affected Candidate	District	SFEC Third Party Disclosure Form	
		Spending Considered to be Neutral	Spending to Support
Mark Farrell	2	\$7,172	\$199
Katy Tang	4	\$13,538	\$1,009
Jane Kim	6	\$10,056	\$181
Scott Wiener	8	\$8,377	\$5,639
Malia Cohen	10	\$37,183	\$13,255
Total		\$76,326	\$20,284

⁴ This data was derived exclusively from the Third Party Disclosure Form, which requires disclosure of independent expenditures as well as member communications and electioneering communications.

The chart below displays third party spending regarding candidates in graphic form.

Chart 2: Third Party Spending in 2014



V. Public Financing at a Glance

It is difficult to identify the effects of the public financing program on the outcome of the elections. Although public financing has now been implemented in elections for candidates for the Board of Supervisors since 2002, there are many variables relating to these elections. In 2002 elections took place in districts where only two-year terms had elapsed, ranked choice voting was implemented in 2004, and the even-numbered districts were voted on in some years whereas seats in the odd-numbered districts were voted on in others. Over the years, significant provisions of the public financing program have changed, such as the threshold for qualifying for public financing, the deadline for applying for public financing, the deadline for filing nomination papers, the maximum amount of public funds that participants could seek, and whether candidates could receive greater than the initial maximum amount when a participating candidate's Individual Expenditure Ceiling is raised. In conclusion, it is difficult to distinguish between the effects of these factors from the effects of the public financing program on the outcome of the elections.

Based on data from the 2014 election and prior elections, participating candidates are generally elected in races where no incumbent is involved. Except for one race in 2012, whenever an incumbent was involved in an election, the incumbent won regardless of whether the incumbent was a participating candidate. The table below provides summary data of the 2014 election as well as data from prior elections.

Table 5: Summary Data from the 2014 and Past Elections

Election Year	2014	2012	2010	2008	2006	2004	2002
Amount of Public Funds Disbursed	\$194,710	\$1,228,097	\$1,477,713	\$1,315,470	\$216,784	\$757,678	\$281,989
Average Amount of Public Funds Disbursed	\$97,355	\$102,341	\$67,169	\$69,235	\$36,131	\$32,943	\$31,332
Number of Candidates who Qualified for the Ballot	17	26	46	42	26	65	28
Number of Participating Candidates	2	12	22	19	6	23	9
Number of Seats up for Election	5	6	5	7	5	7	5
Number of Contested Seats	4	4	4	7	5	7	4
Percentage of Candidates who were Publicly Financed	12%	46%	48%	45%	23%	35%	32%
Percentage of Elected Candidates who were Publicly Financed	0%	50%	60%	71%	20%	43%	60%
Percentage of Incumbents Re-Elected	100%	80%	100%	100%	100%	100%	100%
Total Amount of Candidate Spending	\$1,542,741	\$2,987,290	\$3,581,175	\$3,875,551	\$1,781,148	\$3,654,616	\$2,213,316
Amount of Third Party Spending ⁵	\$96,610	\$1,507,057	\$1,305,460	\$1,324,241	\$543,063	\$251,201	\$261,906

⁵ For the 2002, 2004 and 2006 elections, the amounts for third party spending were obtained from FPPC Form 465. For the 2008, 2010, 2012 and 2014 elections, the amounts listed here for third party spending were obtained from San Francisco Ethics Commission forms that require the disclosure of independent expenditures, member communications and electioneering communications (FPPC forms require disclosure of only independent expenditures).



APPENDIX: Overview of San Francisco's Limited Public Financing Program

A. Introduction

In 2014, San Francisco's limited public financing program for candidates running for Board of Supervisors provided eligible candidates up to \$155,000 (or up to \$152,500 for incumbent candidates). The total annual cost of the public financing program, including program administration, cannot exceed \$2.75 per year per resident of San Francisco.

B. Criteria and Conditions for Qualifying for Public Financing

In order to qualify for public financing, a candidate for the November 2014 election was required to:

- seek election to the office of the Board of Supervisors and be eligible to hold office if elected;
- file *Form SFEC-142(a) Statement of Participation or Non-Participation* with the Ethics Commission indicating that he/she intends to participate in the Board of Supervisors Public Financing Program;
- raise at least \$10,000 (Non-Incumbents) or \$15,000 (Incumbents) in qualifying contributions from at least 100 residents (Non-Incumbents) or 150 residents (Incumbents) of the City in contribution amounts ranging from \$10 to \$100;
- agree to limit spending on his or her campaign to no more than his/her Individual Expenditure Ceiling of \$250,000 or as raised by the Ethics Commission;
- submit a declaration (*Form SFEC-142(b)-1*), a qualifying contributions list (*Form SFEC-142(c)-1*), and supporting documentation to the Ethics Commission to establish eligibility to receive public financing;
- be opposed by a candidate who has qualified for public financing or by a candidate who has received contributions or made expenditures that in the aggregate equal or exceed \$10,000;
- bear the burden of proving that each contribution relied upon to establish eligibility is a qualifying contribution and that all contributions received comply with the Campaign Finance Reform Ordinance ("CFRO");
- bear the burden of proving that expenditures made with public funds were used only for qualified campaign expenditures;
- not make payments to a contractor or vendor in return for the contractor or vendor making a campaign contribution to the candidate; and not make more than a total of 50 payments to a contractor or vendor who has made a contribution to the candidate;
- not accept any loans to the campaign from anyone except the candidate, and not loan more than \$5,000 of the candidate's own money to his/her campaign;
- agree to participate in at least three debates with opponents;
- have paid any outstanding fines owed to the City by the candidate or any of the candidate's campaign committees;
- have filed any outstanding statements, reports or forms owed to the City by the candidate or any of the candidate's campaign committees; and

- have no finding by a court within the past five years that the candidate knowingly, willfully or intentionally violated the CFRO or the campaign finance provisions of the Political Reform Act.

Candidates were prohibited from using public funds to pay administrative, civil, or criminal fines, or to pay for inaugural activities or officeholder expenses. Under the law, all qualified candidates are subject to a mandatory audit.

C. Applying for Public Funds

In order to be certified by the Executive Director of the Ethics Commission as having met the requirements to receive public financing, candidates were required to submit, along with other items:

- 1) no later than June 10, 2014, the deadline for filing nomination papers, a *Statement of Participation or Non-Participation (Form SFEC-142(a))* indicating an intent to participate in the public financing program; and
- 2) beginning February 4 and no later than August 26, 2014, a *Declaration for Public Funds* along with a list of qualifying contributions (*Forms SFEC-142(b)-1 and SFEC-142(c)-1*) and other supporting material.

Candidates agreed to comply with all the eligibility requirements set forth above by signing and submitting the *Declaration for Public Funds*. On the accompanying list of qualifying contributions, candidates were required to include the contributor's full name, street address, occupation and employer if the contribution was \$100 or more; the total amount contributed; the amount of the contributor's qualifying contribution; the date the qualifying contribution was received; the date the qualifying contribution was deposited; and the deposit batch number. Supporting materials include photocopies of the written instruments used by the contributors to make the qualifying contributions, deposit receipts and other items such as evidence of San Francisco residency. Claims for additional public funds were required to be submitted in a similar manner.

D. Formula for Disbursing Public Funds

Candidates who were certified as eligible to participate in the public financing program received a grant of \$20,000. After the initial payment, candidates were able to seek additional public funds based on the amount of matching contributions raised and documented in timely claims submitted to the Ethics Commission.¹ After the initial payment of \$20,000, for each dollar of matching contributions up to the next \$50,000 that candidates raised, they received two dollars from the Election Campaign Fund. Thereafter, for each additional dollar of matching contributions raised, candidates received one dollar of public funds until reaching the maximum. The maximum amount

¹ A matching contribution is a contribution that is not a qualifying contribution or a loan, is made by an individual who is a resident of San Francisco (other than the candidate or the candidate's immediate family), is not received more than 18 months before the November election, and complies with all the requirements of the CFRO and its implementing regulations.

of public funds a candidate could have received was \$155,000 (Non-Incumbents) or \$152,500 (Incumbents), as shown in the table below:

	Private Funds Raised by Non-Incumbents	Matching Public Funds	Private Funds Raised by Incumbents	Matching Public Funds
Initial	\$10,000	\$20,000	\$15,000	\$20,000
1:2	\$50,000	\$100,000	\$50,000	\$100,000
1:1	\$35,000	\$35,000	\$32,500	\$32,500
Total	\$95,000	\$155,000	\$97,500	\$152,500
Total Public and Private Funds	\$250,000		\$250,000	

E. Campaign Spending Limits

To receive public funds, candidates were required to agree to limit their spending to the amount of the Individual Expenditure Ceiling, the expenditure ceiling that is established for each candidate for the Board of Supervisors who is certified by the Ethics Commission as eligible to receive public funds. Each candidate's Individual Expenditure Ceiling starts at \$250,000 and may be raised under certain circumstances. The ceiling may be raised in \$10,000 increments if the highest level of Total Supportive Funds of any opponent of a publicly financed candidate plus the Total Opposition Spending against such publicly financed candidate exceeds \$250,000 by at least \$10,000.

F. Additional Reporting Requirements for Participating and Non-Participating Candidates

All candidates for the Board of Supervisors were required to file *Form SFEC-152(a)-1* if they received contributions, or made expenditures that equaled or exceeded \$10,000. These statements serve to inform the Commission of candidates' financial activities so that the Commission could determine whether a candidate who had applied for public financing met the requirement of being opposed by a candidate who either qualified to receive public financing or received contributions or made expenditures of \$10,000 or more. If the Ethics Commission certified at least one candidate for the Board of Supervisors as eligible to receive public funds, all candidates running for office from the same district were required to file *SFEC-152(a)-2* within 24 hours of receiving contributions or making expenditures that equaled or exceeded \$100,000. Thereafter, such candidates were required to file *Form SFEC-152(a)-2* within 24 hours of each time that they received additional contributions or made additional expenditures that equaled or exceeded \$10,000.

G. Additional Reporting Requirements for Third Party Spending

In a race where the Ethics Commission had certified at least one candidate as eligible to receive public funds, any person who made \$5,000 or more in independent expenditures, electioneering communications, or member communications that clearly identified any candidate for the Board of Supervisors, was required to file a statement within 24 hours

of reaching or exceeding the threshold. Other filing requirements relating to third party spending regarding a candidate for City elective office, such as a candidate for the Board of Supervisors, included the reporting of independent expenditures for mass mailings that total \$1,000 or more, or payments for electioneering communications that total \$1,000 or more. These statements served to inform the Ethics Commission of Total Supportive Funds and Total Opposition Spending relating to candidates so that the Commission could determine whether the Individual Expenditure Ceiling of any candidate should be adjusted.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

Date: February 18, 2015

To: Members, Ethics Commission

PAUL A. RENNE
VICE-CHAIRPERSON

From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director

BRETT ANDREWS
COMMISSIONER

Re: Proposed Regulatory Change for Public Financing Submissions

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Per its contract with the Commission, Netfile recently created an electronic filing system for candidates participating in the City's public financing program. Among other things, the new system allows candidates to submit contribution lists to the Commission in order to establish their eligibility to receive City funds and to otherwise comply with reporting requirements. Candidates are required to submit these contribution lists in order to qualify for public financing and, after qualification, to receive public matching funds.

Commission regulations currently provide that such information must be filed with the Commission "electronically as an attachment to an email or on a compact disc or floppy disk." (SFEC Regs. § 1.142-2(c).) In light of the new system, staff proposes that the Commission amend Regulation 1.142-2(c) to require candidates to file eligibility information with the Commission "electronically in a manner to be designated by the Commission." This language allows the use of the new system, but also permits flexibility should circumstances change in the future. The proposed regulatory language is included as an attachment to this memorandum.

Approval of the proposed change at this time will allow candidates to begin using the new electronic system in May 2015, which is when candidates for the November 2016 election will be able to begin raising funds to qualify for public financing. Staff does not currently intend to require candidates to use the new system for the November 2015 election as doing so could impose burdens on candidates who have already engaged in fundraising or who are using third-party reporting vendors that will have to modify their software to be compatible with the Commission's new electronic system. However, staff will work with other candidates who otherwise are able to use the new system for the November 2015 election.

* * * * *

Attachment: Proposed amendment

Regulation 1.142-2: Process for Establishing Eligibility; Filing Requirements.

(a) Filing Requirement.

Every candidate for the Board of Supervisors who wishes to become eligible to receive public financing must file Form SFEC-142(b)-1 (Declaration for Public Funds), Form SFEC-142(c)-1 (Qualifying Contributions List) and supporting material with the Ethics Commission no earlier than nine (9) months before but no later than the 70th day before the date of the election.

Every candidate for Mayor who wishes to become eligible to receive public financing must file Form SFEC-142(b)-2 (Declaration for Public Funds), Form SFEC-142(c)-2 (Qualifying Contributions List), and supporting material with the Ethics Commission no earlier than nine (9) months before and no later than the 70th day before the date of the election.

(b) Declaration by Candidate: Forms SFEC-142(b)-1 and SFEC-142(b)-2.

The information disclosed on Forms SFEC-142(b)-1 and SFEC-142(b)-2 (Declaration by Candidate) shall include but is not limited to the following: the names, mailing and email addresses, and telephone and facsimile numbers for the candidate and treasurer; a list of authorized persons to receive payments from the Election Campaign Fund; and a declaration under penalty of perjury by the candidate that he or she understands the requirements for participation in the public financing program.

(c) **Qualifying and Matching Contributions Lists.** The information disclosed on Forms SFEC-142(c)-1 and SFEC-142(c)-2 (Qualifying Contributions List) and Forms SFEC-144(a)-2 and 144(b)-2 (Matching Contributions List) shall include but is not limited to: each contributor's full name, the address of each contributor's primary residence, the total amount contributed by each contributor, the amount of each contributor's qualifying contribution, the date on which the candidate received each contributor's qualifying contribution, and the deposit batch number for each qualifying contribution. When the cumulative amount of contributions from any contributor equals or exceeds \$100, the information for any qualifying contribution from such contributor must also include the contributor's occupation, the contributor's employer or, if the contributor is self-employed, the name of the contributor's business. Candidates must file this information *electronically as an attachment to an email or on a compact disc or floppy disk electronically in a manner to be designated by the Commission.*



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: February 18, 2015

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director

Re: Potential Campaign Finance Reform Ordinance Amendments

Introduction

At its last meeting, the Ethics Commission asked for a further discussion of ideas that might augment the City's Campaign Finance Reform Ordinance ("CFRO"), codified at Campaign and Governmental Conduct Code ("CGCC") section 1.100 et seq. This memorandum is intended to facilitate that discussion.

More specifically, staff has presented below six ideas whose purposes include improving disclosure and preventing corruption or the appearance of corruption in connection with City campaigns. These ideas were derived from prior Commission meetings, comments from interested parties, and Commissioner suggestions. Also, in August 2014, the Commission committed to discussing items 4 and 5 after reviewing recommendations issued by the 2013-2014 San Francisco Civil Grand Jury.

This memorandum presents a general overview of each idea. It is staff's hope that, after discussing these ideas, the Commission will identify those that it wishes staff to pursue and will give specific directions to staff in this regard.

Potential CFRO Amendments

1. Contribution limits and bans for candidate-controlled ballot measure and/or general purpose committees.

This proposal would subject committees that are "controlled" by City officials or candidates – but that are *not* directly related to their own campaigns to elective office – to the City's limits and prohibitions for candidate contributions. Under state law, a candidate is deemed to "control" a committee if he or she "has a significant influence on the actions or decisions of the committee." (Cal. Govt. Code § 82016.) The Friends of Ethics proposed this idea in connection with the CFRO amendments approved by the Commission in January 2015.

A City candidate's election campaign committee currently may only accept up to \$500 per contributor and may not accept any contributions from corporations or certain City contractors. (CGCC §§ 1.114 & 1.126.) However, contributions to other committees that are controlled by candidates are generally *not* subject to any limits or prohibitions, *other than the contractor ban*. In other words, corporations and others may contribute well over \$500 to these candidate-controlled committees, although not to their own campaign committees.

This proposal primarily concerns two types of candidate-controlled committees not directly related to the candidate's or officer's election campaign. First, a candidate can control a committee formed primarily to support or oppose a ballot measure. Second, a candidate can control a "general purpose" committee that supports and opposes various measures and other committees.¹ Both types of these candidate-controlled committees have been opened (both in and out of San Francisco) in the past, including the following:

Name	Type of Committee	Open
Yes on A -- a coalition of MUNI riders, environmentalists, labor and Supervisor Aaron Peskin	Ballot Measure Committee	2007-2011
Yes on Proposition B, supported by Public Defender Jeff Adachi et al.	Ballot Measure Committee	2010-2011
Yes on Proposition D, supported by Public Defender Jeff Adachi et al.	Ballot Measure Committee	2011-2012
Mayor Ed Lee for San Francisco Committee	General Purpose Committee	2012-2015

The Commission may wish to address contributions to candidate-controlled ballot measure committees, to candidate-controlled general purpose committees, or to both. These proposals would raise constitutional issues. In this regard, the Commission should bear in mind that the courts have struck down contribution limits on ballot measure committees and general purpose committees that make independent expenditures. (*Citizens Against Rent Control v. City of Berkeley* (1981) 454 U.S. 290, 299; *Long Beach Area Chamber of Commerce v. City of Long Beach* (9th Cir. 2010) 603 F.3d 684, 699.)

However, contributions to *candidate-controlled* ballot measure or general purpose committees, even if not directly related to the candidate's election campaign, may present a risk of quid pro quo corruption (or the appearance thereof) with regard to the controlling candidate or officer -- i.e., a contributor could make contributions to a controlled committee in exchange for

¹ Candidates can also control legal defense funds and (in other jurisdictions) officeholder account funds. The Commission may also consider imposing limits on legal defense funds.

an official action. Indeed, federal law places limits on contributions to a federal officeholder's controlled "Leadership PAC" for this reason. (See FEC Advisory Opinion 2011-21.) But this is a relatively novel constitutional issue. Although dicta in one court of appeal opinion questioned the constitutionality of subjecting candidate-controlled ballot measure to limits (*Citizens to Save California v. Fair Political Practices Commission* (2006) 145 Cal.App.4th 736, 753-54), staff is otherwise unaware of any caselaw that directly addresses this issue or limits on candidate-controlled general purpose committees.

Regardless, under existing caselaw, it is clear that any limit or prohibition that is ultimately enacted must be supported by a fully-developed factual record informed by interested persons meetings, further legal research, etc., which demonstrates the compelling interest served by any such limitations. (*Citizens for Clean Government v. City of San Diego* (9th Cir. 2007) 474 F.3d 647, 652-54 ["We cannot hold that hypotheticals, accompanied by vague allusions to practical experience, demonstrate a sufficiently important state interest" for campaign limits or prohibitions.].)

A final note regarding process, should the Commission decide to move forward on this issue. If the Board of Supervisors and/or Mayor does not support the Commission's amendment, the Commission has the ability to amend CFRO by directly placing a measure on the ballot for the next general election (i.e., November 2015) by a four-fifths vote of its members.² (Charter § 15.102.) The deadline for the Commission's submission of such a measure is the same as for an ordinance placed on the ballot by either the Board of Supervisors or the Mayor. In general, the deadline for submission falls in late July.

The Commission should bear in mind that if it directly places a measure on the ballot, the Charter significantly restricts the ability of Commission members and staff to advocate for its adoption. More specifically, Charter section 15.100(c) prohibits members of the Commission from participating in any campaign supporting a City ballot measure. For the purpose of this prohibition, participation includes making or soliciting contributions, publicly endorsing or urging any endorsement, or any involvement in decisions by organizations to participate in a campaign.

2. Fundraising and/or bundling reporting.

This proposal concerns requiring individuals who engage in a certain level of fundraising and/or bundling for candidates to file public reports disclosing such activity. In this regard, bundling typically refers to collecting multiple contributions and delivering them to a campaign, while fundraising is more expansive and encompasses holding a fundraiser, soliciting contributions, etc., even if the individual does not personally collect and forward the contribution checks to the campaign. The Friends of Ethics originally proposed fundraising/bundling bans in connection with the CFRO amendments approved by the Commission in January 2015.

The Supreme Court has recognized that larger contributions implicate quid pro quo corruption concerns. (See *Buckley v. Valeo* (1974) 424 US 1.) Such concerns are also implicated by "bundling or fundraising [which if] over a threshold level can represent a more significant

² This is also true for any CFRO amendment discussed in this memorandum.

level of support for a candidate than merely making a personal contribution.” (Richard Briffault, *The Anxiety of Influence: The Evolving Regulation of Lobbying*, 13 Elec. L. J. 160, 180 (2014).) However, given the First Amendment issues inherent in banning such activity, a reporting requirement may be more appropriate than an outright ban.

There is precedent for such disclosure, although it is typically limited to lobbyists. For example, lobbyists in San Francisco are currently required to disclose contributions of \$100 or more that they fundraise for City candidates and committees. (CGCC § 2.110(c)(8).) Moreover, federal campaigns are required to disclose lobbyist bundlers on special supplemental reports. (2 U.S.C. § 30104(i); 11 CFR § 104.22.)

This proposal would require bundling and/or fundraising disclosure (after reaching a certain threshold) even for non-lobbyists.³ Some may argue that such disclosure is not warranted and burdensome, particularly for those who are not currently attempting to affect City decisions. On the other hand, many individuals other than lobbyists who raise funds for City candidates and officers may have financial interests affected by City laws.

Finally, should it decide to pursue this issue, the Commission will have to decide (among other things) whether to impose additional reporting requirements on candidate committees, or to require separate reporting by the individuals engaged in fundraising/bundling.

3. Enhanced private right of action.

This proposal involves enhancing the private right of action found in CFRO section 1.168(b), which allows any voter to sue a City candidate or committee to force compliance with CFRO, so long as the Commission and the City Attorney have decided not to pursue an enforcement action. The San Francisco Civil Grand Jury for 2013-2014 made this recommendation and in August 2014, the Commission decided to consider its merits.

In short, the Civil Grand Jury (and the Friends of Ethics) has argued that section 1.168(b) should be amended to better incentivize potential plaintiffs to enforce CFRO violations. In this regard, the Friends of Ethics has pointed to analogous laws in Los Angeles and at the state level, which provide for the recovery of 50 percent of any penalty eventually imposed on the defendant after a court proceeding. (L.A. Muni. Code section 49.7.38(b); Cal. Govt. Code §§ 91004, 91005 & 91009.) Section 1.168(b) does not contemplate *any* penalties, but does provide a significant incentive by allowing a successful plaintiff to recover attorneys’ fees.

Staff is aware of only one instance in San Francisco when a potential plaintiff threatened to pursue a private right of action for a CFRO violation (and ultimately did not do so). Similarly, in Los Angeles and at the state level, the private right of action has evidently been used in only a very few instances. In Los Angeles, it has been invoked only once in recent memory by a plaintiff who evidently failed to follow correctly the statutory procedures.

³ Federal campaigns will sometimes voluntarily disclose non-lobbyist bundlers. Former FEC chairman Trevor Potter has proposed *requiring* such disclosure as part of his “American Anti-Corruption Act.”

Should it decide to enhance section 1.168(b), the Commission should consider allowing a recovery of penalties only with respect to certain violations (as is done at the state level)⁴ or requiring a certain minimum penalty amount in order to avoid the possibility of lawsuits for smaller, technical violations.

4. Contribution bans for persons receiving a “public benefit” from the City.

The San Francisco Civil Grand Jury for 2013-2014 recommended that the Commission consider whether to re-enact contribution bans on persons receiving a “public benefit” from the City and otherwise re-incorporate findings and declarations found in Proposition J, a measure approved by San Francisco voters in 2000.⁵ In August 2014, the Commission decided to consider the merits of this proposal in the future.

Proposition J imposed a prohibition on campaign contributions and gifts to certain City officials from persons receiving a “public benefit,” such as a variance, special use permit, tax abatement, etc. The prohibition lasted up to six years in some instances. (A copy of the text of Proposition J is attached.) Proposition J was subsequently superseded in 2003 by Proposition E, which included the contractor contribution ban currently found in CFRO section 1.126, among other things. The current contractor ban lasts for only six months after approval of a contract.

The proposal being considered entails re-enacting certain aspects of Proposition J which were changed when Proposition E passed. In essence, this is a “pay-to-play” proposal that posits that contributions from persons receiving public benefits of a certain value present a particular risk of quid pro quo corruption (or the appearance thereof) which justifies a complete ban on contributions to the persons approving those matters. The idea is that the logic behind the ban on contractor contributions should similarly be applied in these instances. The ban would apply to an entity’s directors and officers, as well as certain of its owners.

While a full analysis of Proposition J is beyond the scope of this memorandum,⁶ staff would again note that reenactment of any of Proposition J’s prohibitions would have to be supported by a fully-developed factual record demonstrating the need for such prohibitions and their appropriate scope. In this regard, the Commission would likely have to consider (based on the record) what decisions and monetary thresholds should trigger a ban, as well as the appropriate length of the ban.⁷

Finally, the Commission should also be aware that certain pay-to-play laws are currently the subject of litigation given how narrowly the Supreme Court construed the constitutionally

⁴ Recovery for campaign violations is allowed under state law for reporting violations and cash and anonymous contributions. (Cal. Govt. Code §§ 91004, 91005.)

⁵ Proposition J also imposed gift and employment bans, but staff understands that such bans are not before the Commission at this time as they are not properly considered part of CFRO.

⁶ The Los Angeles County Superior Court struck down a similar law in 2002, although the court did not issue a written opinion explaining its ruling in that matter.

⁷ Staff would also note that state law already prohibits appointed officials accepting contributions in excess of \$250 from persons with matters before them, and for three months following the resolution of the matter. Those officials must also recuse themselves from considering a matter involving a person who contributed more than \$250 in the past 12 months. (Cal. Govt. Code § 84308.)

acceptable anti-corruption interest in its recent *McCutcheon* case. (See *McCutcheon v. Federal Election Commission*, No. 12-536; *New York Republican State Committee et al. v. Securities and Exchange Commission* No. 14-01345 [challenging constitutionality of SEC pay-to-play laws].)

5. Debarment as a penalty.

This proposal concerns adding debarment as a penalty for CFRO violations, particularly impermissible contributions made by City contractors. Generally, debarment renders a person ineligible from bidding on or being considered for a City contract for a predetermined period of time. The Friends of Ethics proposed this idea in connection with the CFRO amendments approved by the Commission in January 2015, and believes that debarment should render a person ineligible for many of the “public benefits” described in Proposition J (i.e., not just City contracts).

The Friends of Ethics has argued that the current penalties for CFRO violations do not provide a significant deterrent effect,⁸ and that debarment would likely have such an effect. Voters in the City of Los Angeles approved a debarment penalty in March 2011 in connection with a ban on certain City contractor contributions and fundraising. (L.A. City Charter § 470(c)(12)(l).) The Los Angeles City Ethics Commission has yet to consider a debarment matter, but its staff has noted the importance of its “mitigation” regulations which allow that commission to waive a debarment remedy based on consideration of the severity of the violation and the effect of debarment on City services, finances, projects and legal obligations.

San Francisco already has a debarment process under Chapter 28 of the Administrative Code (copy attached), and any violation of the ban on contractor contributions could qualify as a ground for debarment. Under Chapter 28, it would be up to the discretion of the “charging official” -- such as the Mayor, the Controller, the City Administrator or the City Attorney to pursue debarment on this basis. However, there have been very few debarment proceedings under Chapter 28 since it took effect in 2004. Additionally, the Commission could also currently pursue debarment as an agreed-upon condition for settlement.

Should the Commission wish to investigate this issue further, staff would recommend interested persons meetings with City contractors and City agencies, among others, given its potential effect on the City’s competitive bidding process. Moreover if the Commission adopts debarment as a penalty, it would likely be advisable to reserve debarment for more serious, deliberate violations given the severity of the sanction it imposes, as Los Angeles has essentially done through its “mitigation” regulations.

⁸ The Commission is currently able to impose penalties of up to five thousand dollars (\$5,000) for each violation or three times the amount which a person fails to report properly or unlawfully contributes, expends, gives or receives, whichever is greater. (Charter § C3.699-13(c)(3)).

6. Slate Mailer Filings.

This proposal would require slate mailer organizations ("SMOs") active primarily in San Francisco to file their semi-annual and pre-election reports with the Ethics Commission, instead of with the Department of Elections, as is currently required under City law. This idea was most recently mentioned by Friends of Ethics in connection with the CFRO amendments approved by the Commission in January 2015.

SMOs are entities that are paid at least \$500 to produce and distribute mailers supporting or opposing four or more candidates or measures on a given ballot. (Cal. Govt. Code §§ 82048.3, 82048.4.) SMOs are required to include certain disclaimers on their mailers, and are required to file semi-annual and pre-election reports that disclose payments received and made. (Cal. Govt. Code §§ 84218, 84219.)

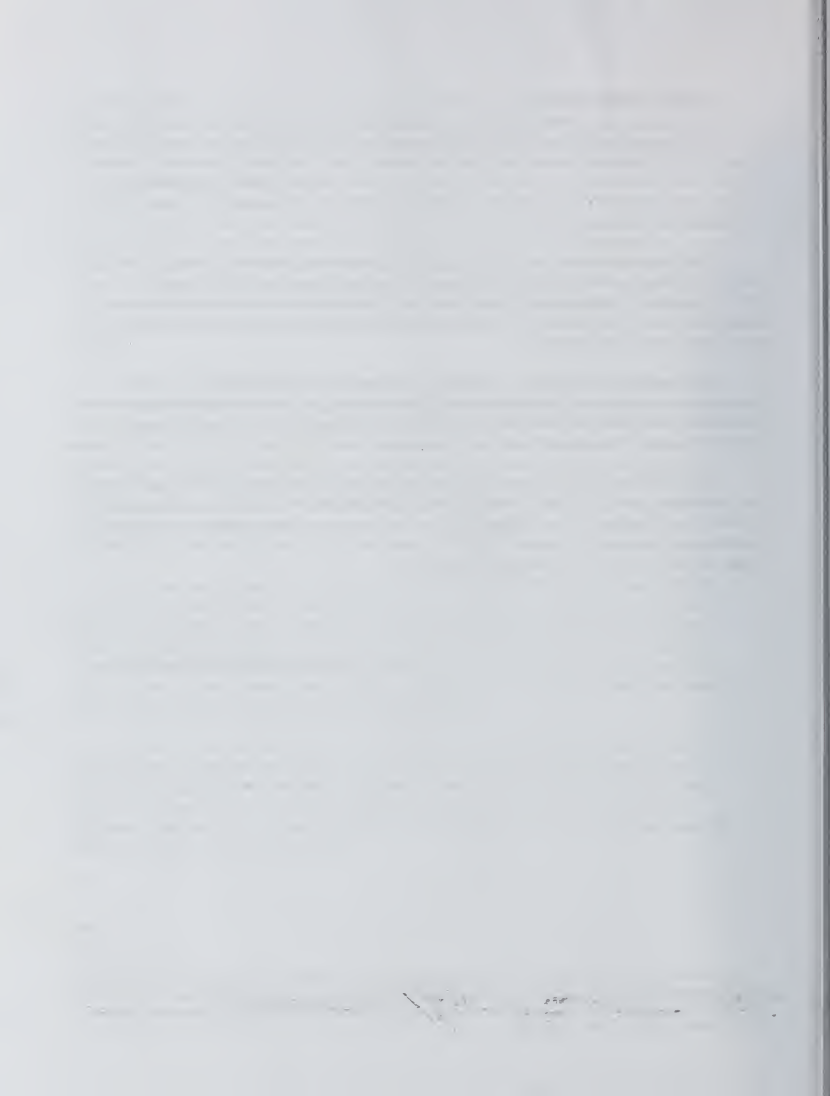
Although certain SMOs are very active in San Francisco elections, these SMOs are considered state entities and file their reports with the Secretary of State and with the Department of Elections, which does not post those reports online. This proposal would require SMOs to instead file copies of their reports with the Commission.

The FPPC has advised that the City may transfer filing officer responsibility for SMOs to the Commission. (*FPPC Advice Letter to Oliver Luby (7/26/10) No. 1-10-105.*) Although such a transfer would impose additional administrative burdens on the Commission (i.e., staff time accepting and uploading the reports),⁹ the public would be able to view reports for City SMOs along with reports for City candidates and committees.

* * * * *

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⁹ Under state law, San Francisco may not impose e-filing obligations on SMOs, which are already required to e-file with the state. (Cal. Govt. Code § 84615(a).)



City Contractor Contributions

J

PROPOSITION J

Shall the City ban officials from accepting gifts, payments, or campaign contributions from a person or group if the official previously approved granting the donor a contract or special benefit?

YES
NO



Digest

by Ballot Simplification Committee

THE WAY IT IS NOW: Under state and local law, public officials may not participate in decisions in which they have a financial interest. For example, officials may not vote to give a contract to a company that they own in whole or in part.

Officials must report all gifts they receive worth more than \$50, and may not accept more than \$300 in gifts per year from any single source. An official may not participate in making a government decision affecting anyone who has given \$250 or more in gifts or income to the official in the past year. Campaign contributions to an official are not considered gifts or income.

THE PROPOSAL: Proposition J is an ordinance that would ban any City official from accepting a gift, payment, job offer, or campaign contribution from a person or group, if the City official previously had approved granting a contract, lease, franchise, land use variance, special tax

benefit, or monetary payment to that person or group. This ban would apply from the date of approval of the benefit until two years after the official's term of office ended or the official otherwise left office, or six years after the approval, whichever came first.

A "YES" VOTE MEANS: If you vote yes, you want to ban City officials from accepting gifts or campaign contributions from a person or group where the official has previously approved granting a contract or special benefit to that person or group.

A "NO" VOTE MEANS: If you vote no, you do not want to ban City officials from accepting gifts or campaign contributions from a person or group where the official has previously approved granting a contract or special benefit to that person or group.

Controller's Statement on "J"

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition J:

Should the proposed ordinance be adopted, in my opinion, it would have a minor effect on the cost of government.

How "J" Got on the Ballot

On June 30, 2000 the Department of Elections certified that the initiative petition, calling for Proposition J to be placed on the ballot, had qualified for the ballot.

9,735 signatures were required to place an ordinance on the ballot.

This number is equal to 5 % of the total number of people who voted for Mayor in 1999. A random check of the signatures submitted on June 1, 2000 by the proponent of the initiative petition showed that more than the required number of signatures were valid.

THIS MEASURE REQUIRES 50%+1 AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE P-133
SOME OF THE WORDS USED IN THE BALLOT DIGEST ARE EXPLAINED ON PAGE P-2

J

City Contractor Contributions

PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION J

No arguments were submitted

REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION J

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.

City Contractor Contributions

J

OPPONENT'S ARGUMENT AGAINST PROPOSITION J

No arguments were submitted

REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION J



City Contractor Contributions

PAID ARGUMENTS IN FAVOR OF PROPOSITION J

Republicans stand for good government. This reform proposition was put on the ballot by a non-partisan, grassroots, good-government group. It should enjoy the respect of all citizens. This measure would help stop bribery and corruption in city hall.
And in San Francisco, that'll be a full time job!

Adam Sparks

GOP Candidate for Congress, San Francisco

The true source of funds used for the printing fee of this argument is Adam Sparks.

The flow of corporate campaign contributions and gifts to public officials is corrupting our local democracy.

Joel Ventresca

President, Coalition for San Francisco Neighborhoods (1987-89; 1992-94)

The true source of funds used for the printing fee of this argument is Joel Ventresca.

Ralph Nader, both the San Francisco Democratic AND Republican committees and California Common Cause all agree on only one thing this year. They all endorse Measure J. That's because Measure J is good government without politics.

The signatures needed to qualify Measure J were collected by the non-partisan Oaks Project through an unprecedented 100% volunteer petition effort.

Measure J prevents corruption by banning "legal" kickbacks. J bars politicians from taking money, gifts, or jobs from anyone benefiting from the politician's actions (i.e. granting city contracts, special tax breaks of land deals).

VOTE YES on Measure J.

Ben Gertner

Oaks Project Volunteer

The true source of funds used for the printing fee of this argument is Nicholas Wirz.

Stop *special deals* to downtown special interests like *Bloomington*!

Vote YES on Prop J

Jake McGoldrick

Candidate for District 1 Supervisor

The true source of funds used for the printing fee of this argument is McGoldrick for Supervisor.

The three largest contributors to the true source recipient committee are 1. Hiroshi Fukuda 2. Mowitza Biddle 3. Steve Williams.

Elected officials shouldn't reward campaign contributors with city contracts and money. But that's exactly what has brought the FBI into City Hall. Keep everyone's hands out of the cookie jar.
Vote Yes on Proposition J.

Harvey Milk Lesbian, Gay, Bisexual, Transgender Democratic Club

The true source of funds used for the printing fee of this argument is Harvey Milk Lesbian, Gay, Bisexual, Transgender Democratic Club.

The three largest contributors to the true source recipient committee are 1. Californians for Indian Self-Reliance 2. Assemblywoman Carole Migden 3. Harvey Milk Lesbian, Gay, Bisexual, Transgender Democratic Club.

We support city government for the public interest, not special interests!

Proposition J promotes integrity in city officials, saving taxpayers from wasteful contracts and favoritism. **Vote Yes on J.**

San Francisco Green Party

The true source of funds used for the printing fee of this argument is the San Francisco Green Party.

The three largest contributors to the true source recipient committee are: 1. Marge Harburg 2. Jo Chamberlain 3. John Strawn.

City Contractor Contributions

J

PAID ARGUMENTS IN FAVOR OF PROPOSITION J

Should contractors with business before boards and commissions be prohibited from donating to the members of those boards? This is a tough one, I just don't know, hmmm, let me think...

Vote YES on J.

Matt Gonzalez

The true source of funds used for the printing fee of this argument is Matt Gonzalez.

Proposition J bans the quid pro quo of awarding city contracts for campaign contributions. It stops city officials from taking money and jobs from those they award contracts to.

Vote Yes on Proposition J!

San Francisco Tomorrow

The true source of funds used for the printing fee of this argument is San Francisco Tomorrow.

The three largest contributors to the true source recipient committee are 1. Jane Morrison 2. Zoanne Nordstrom 3. Jennifer Clary.

VOTE YES ON PROPOSITION J!

There are at least two reasons for voters and taxpayers to support Proposition J strongly: First, it's a sincere initiative by real voters, not elected officials, to control the disturbing syndrome of money and other gifts dictating Board of Supervisors and various commissions' actions. Secondly, it's plain good government policy to prohibit decision-makers from voting on matters where proponents or opponents have given campaign contributions or gifts or anything of value.

Proposition J stops that kind of purchased influence from dominating City Hall decisions that affect our lives and well-being. This measure was painstakingly qualified for the ballot by people like our neighbors and yours. Don't let them down. Send malodorous City Hall a strong message - San Francisco is not for sale. **Vote YES ON PROPOSITION J.**

Good Government Alliance

The true source of funds used for the printing fee of this argument is Good Government Alliance.

The largest contributor to the true source recipient committee is:
1. Kopps Good Government Alliance.

The San Francisco Republican Party supports reasonable and workable reforms of the political system.

That is why we are supporting Proposition J. Prop. J will help eliminate undue influence, whether in fact or in appearance, by entities or individuals doing or seeking business with the City.
Vote Yes on Proposition J.

San Francisco Republican Party

Donald A. Casper, Chairman

Mike Garza, Candidate

12th Congressional District

Terence Faulkner, Candidate

3rd Senate District

Julie Bell

Lee S. Dolson, Ph.D.

Gail E. Neira

Grace Norton-Fitzpatrick

Les Payne

Howard Epstein, Candidate

12th Assembly District

Harold Hoogasian, Candidate

District VII Supervisor

Albert Chang

Joel Hornstein

Denis Norrington

Rita O'Hara

Dana Walsh

The true source of funds used for the printing fee of this argument is the above signers and the San Francisco Republican Party.



City Contractor Contributions

PAID ARGUMENTS AGAINST PROPOSITION J

No Paid Arguments Were Submitted Against Measure J

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.

TEXT OF PROPOSED INITIATIVE ORDINANCE PROPOSITION J

Amendment to San Francisco Administrative Code

Chapter 16 of the San Francisco Administrative Code shall be amended by the addition of the following Article:

ARTICLE XX. TAXPAYER PROTECTION

Section 16.990. Title

This Article shall be known as the City and County of San Francisco Taxpayer Protection Amendment of 2000.

Section 16.991. Findings and Declarations

(a) The people of the City and County of San Francisco ("City and County") find that the use or disposition of public assets is often tainted by conflicts of interest among local public officials entrusted with their management and control. Such assets, including publicly owned real property, land use decisions conferring substantial private benefits, conferral of a franchise without competition, public purchases, taxation, and financing, should be arranged strictly on the merits for the benefit of the public, and irrespective of the separate personal or financial interests of involved public officials.

(b) The people find that public decisions to sell or lease property, to confer cable, trash hauling and other franchises, to award public construction or service contracts, or to utilize or dispose of other public assets, and to grant special land use or taxation exceptions have often been made with the expectation of, and subsequent receipt of, private benefits from those so assisted to involved public "decision makers". The people further find that the sources of such corruptive influence include gifts and honoraria, future employment offers, and anticipated campaign contributions for public officials who are either elected or who later seek elective office. The trading of special favors or advantage in the management or disposal of public assets and, in the making of major public purchases compromises the political process, undermines confidence in democratic institutions, deprives meritorious prospective private buyers, lessees, and sellers of fair opportunity, and deprives the public of its rightful enjoyment and effective use of public assets.

(c) Accordingly, the people declare that there is a compelling state interest in reducing the corruptive influence of emoluments, gifts, and prospective campaign contributions on the decisions of public officials in the management of public assets and franchises, and in the disposition of public funds. The people, who compensate public officials, expect and declare that as a condition of such public office, no gifts, promised employment, or campaign contributions shall be received from any substantial

beneficiary of such a public decision for a reasonable period, as provided herein.

Section 16.992. Definitions

(a) As used herein, the term public benefit does not include public employment in the normal course of business for services rendered, but includes a contract, benefit, or arrangement between the City and County and any individual, corporation, firm, partnership, association, or other person or entity to:

(1) provide personal services of a value in excess of \$50,000 over any 12 month period;

(2) sell or furnish any material, supplies or equipment to the City and County of a value in excess of \$50,000 over any 12 month period;

(3) buy or sell any real property to or from the City and County with a value in excess of \$50,000, or lease any real property to or from the City and County with a value in excess of \$50,000 over any 12 month period;

(4) receive an award of a franchise to conduct any business activity in a territory in which no other competitor potentially is available to provide similar and competitive services, and for which gross revenue from the business activity exceeds \$50,000 in any 12 month period;

(5) confer a land use variance, special use permit, or other exception to a pre-existing master plan or land use ordinance pertaining to real property where such decision has a value in excess of \$50,000;

(6) confer a tax abatement, exception, or benefit not generally applicable of a value in excess of \$5,000 in any 12 month period;

(7) receive cash or specie of a net value to the recipient in excess of \$10,000 in any 12 month period.

(b) Those persons or entities receiving public benefits as defined in Section 16.992(a)(1)-(7) shall include the individual, corporation, firm, partnership, association, or other person or entity so benefiting, and any individual or person who, during a period where such benefit is received or accrues,

(1) has more than a ten percent (10%) equity, participation, or revenue interest in that entity; or

(2) who is a trustee, director, partner, or officer of that entity.

(c) As used herein, the term personal or campaign advantage shall include:

(1) any gift, honoraria, emolument, or other pecuniary benefit of a value in excess of \$50;

(2) any employment for compensation;

(3) any campaign contributions for any elective office said official may pursue.

(d) As used herein, the term public official includes any elected or appointed public official acting in an official capacity.

Section 16.993. Prohibitions

(a) No City and County public official who has

exercised discretion to approve and who has approved or voted to approve a public benefit as defined in Section 16.992(a) may receive a personal or campaign advantage as defined in Section 16.992(c) from a person as defined in Section 16.992(b) for a period beginning on the date the official approves or votes to approve the public benefit, and ending no later than

(1) two years after the expiration of the term of office that the official is serving at the time the official approves or votes to approve the public benefit;

(2) two years after the official's departure from his or her office whether or not there is a pre-established term of office; or

(3) six years from the date the official approves or votes to approve the public benefit; whichever is first.

(b) Section 16.993(a) shall also apply to the exercise of discretion of any such public official serving in his or her official capacity through a redevelopment agency, or any other public agency, whether within or without the territorial jurisdiction of the City and County either as a representative or appointee of the City and County.

Section 16.994. Responsibilities of City and County Public Officials and Advantage Recipients

(a) City and County public officials shall practice due diligence to ascertain whether or not a benefit defined under Section 16.992(a) has been conferred, and to monitor personal or campaign advantages enumerated under Section 16.992(c) so that any such qualifying advantage received is returned forthwith, and no later than ten days after its receipt.

(b) City and County public officials shall provide, upon inquiry by any person, the names of all entities and persons known to them who respectively qualify as public benefit recipients under the terms of Sections 16.992 and 16.993.

Section 16.995. Disclosure of the Law

The City and County shall provide any person, corporation, firm, partnership, association, or other person or entity applying or competing for any benefit enumerated in Section 16.992(a) with written notice of the provisions of this Article and the future limitations it imposes. Said notice shall be incorporated into requests for "proposal," bid invitations, or other existing informational disclosure documents to persons engaged in prospective business with, from, or through the City and County.

Section 16.996. Penalties and Enforcement

(a) In addition to all other penalties which might apply, any knowing and willful violation

(Continued on next page)

LEGAL TEXT OF PROPOSITION J (CONTINUED)

of this Article by a public official constitutes a criminal misdemeanor offense.

(b) A civil action may be brought under this Article against a public official who receives a personal or campaign advantage in violation of Section 16.993. A finding of liability shall subject the public official to the following civil remedies:

(1) restitution of the personal or campaign advantage received, which shall accrue to the General Fund of the City and County;

(2) a civil penalty of up to five times the value of the personal or campaign advantage received;

(3) injunctive relief necessary to prevent present and future violations of this Article;

(4) disqualification from future public office or position within the jurisdiction, if violations are willful, egregious, or repeated.

(c) A civil action under subdivision (b) of this section may be brought by any resident of the City and County. In the event that such an action is brought by a resident of the City and County and the petitioner prevails, the respondent public official shall pay reasonable attorney's fees and costs to the prevailing petitioner. Civil penalties collected in such a prosecution shall accrue 10% to the petitioner and 90% to the General Fund of the City and County.

(d) Any person who believes that the provisions of this Article have been violated may file a complaint with the Ethics Commission. Upon receipt of a complaint, or upon its own initiative, the Commission may investigate alleged violations of this Article and may enforce the provisions of this Article pursuant to Charter Section C3.699-13 and to the rules and regulations adopted pursuant to Charter Section 15.102.

Section 16.997. Effect of Article

The provisions of this Article are intended to supplement, and not to replace, any provisions of the San Francisco Charter and Administrative Code that relate to campaign finance, lobbying, conflicts of interest or governmental ethics.

Section 16.998. Severability

If any provision of this Article is held invalid, such invalidity or unconstitutionality shall not affect other provisions or applications which can be given effect without the invalidated provision, and to this end the provisions of this Article are severable.

[Print](#)

San Francisco Administrative Code

CHAPTER 28:

ADMINISTRATIVE DEBARMENT PROCEDURE

- Sec. 28.0. Findings.
- Sec. 28.1. Definitions.
- Sec. 28.2. Debarment Authority.
- Sec. 28.3. Grounds for Debarment.
- Sec. 28.4. Initiating the Proceedings; Counts and Allegations.
- Sec. 28.5. Service of the Counts and Allegations.
- Sec. 28.6. Request for a Hearing.
- Sec. 28.7. Failure to Respond to the Counts and Allegations.
- Sec. 28.8. Appointment of the Hearing Officer.
- Sec. 28.9. Pre-Hearing Procedure.
- Sec. 28.10. Hearings and Determinations.
- Sec. 28.12. Term and Effect of Administrative Debarment; Violation of Order.
- Sec. 28.13. Publication and Reports of Debarment.

SEC. 28.0. FINDINGS.

The Board of Supervisors finds that contracting with the City and County of San Francisco is an important municipal affair, and that the award of contracts to contractors who fail to deal with the City and County in good faith compromises the integrity of the contracting process and results in the improper expenditure of public funds. The Board of Supervisors recognizes that the City and County must afford contractors due process in any determination that precludes any individual or business entity from participating in the contracting process. This Chapter does not apply to a determination of nonresponsibility for a single contract or identifiable group of contracts, but for the broader determination of irresponsibility of a contractor for the general purpose of contracting with the City and County of San Francisco for a specified period. The Board of Supervisors therefore adopts this Chapter 28 to prescribe standard procedures for the prosecution, determination and implementation of administrative debarments.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.1. DEFINITIONS.

The following definitions apply for only the purposes of this Chapter 28:

- (A) **Affiliate.** Any individual person or business entity related to a contractor where such individual

or business entity, directly or indirectly, controls or has the power to control the other, or where a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees or a business entity organized or following the suspension, debarment, bankruptcy, dissolution or reorganization of a person which has the same or similar management; and/or ownership or principal employee as the contractor.

(B) **Charging Official.** Any City department head or the President of any Board or Commission authorized to award or execute a contract under the San Francisco Charter or the Administrative Code, the Mayor, the Controller, the City Administrator, the Director of Administrative Services or the City Attorney. All charging officials are authorized to act on behalf of the City and County in prosecuting any administrative debarment proceeding and in issuing an Order of Debarment under this Chapter.

(C) **Contractor.** Any individual person or business entity who submits a qualification statement, proposal, bid or quote or who contracts directly or indirectly with the City and County of San Francisco for the purpose of providing any goods or services to or for the City and County of San Francisco including without limitation any contractor, subcontractor, consultant, subconsultant or supplier at any tier. The term "contractor" shall include any responsible managing corporate officer who has personal involvement and/or responsibility in obtaining a contract with the City and County of San Francisco or in supervising and/or performing the work prescribed by the contract.

(D) **Debarment.** The administrative determination against a potential bidder, or contractor declaring such potential bidder or contractor irresponsible and disqualified from participating in the competitive process for contracts with the City and County of San Francisco or from entering into contracts, with the City and County of San Francisco for a period specified in the debarment order.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.2. DEBARMENT AUTHORITY.

Notwithstanding any other provision of the Administrative Code, any charging official shall have authority to issue Orders of Debarment against any contractor in accordance with the procedures set forth in this Chapter.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.3. GROUNDS FOR DEBARMENT.

A charging official shall issue an Order of Debarment for any contractor who the hearing officer, based on evidence presented, finds to have engaged in any willful misconduct with respect to any City bid, request for qualifications, request for proposals, purchase order and/or contract. Such willful misconduct may include, but need not be limited to the following: (a) submission of false information in response to an advertisement or invitation for bids or quotes, a request for qualifications or a request for proposals; (b) failure to comply with the terms of a contract or with provisions of this Administrative Code; (c) a pattern and practice of disregarding or repudiating terms or conditions of City contracts, including without limitation repeated unexcused delays and poor performance; (d) failure to abide by any rules and/or regulations adopted pursuant to the San Francisco Municipal Codes; (e) submission of false claims as defined in this Administrative Code, Chapter 6, Article V; (f) a verdict, judgment, settlement, stipulation or plea agreement establishing the contractor's violation of any civil or criminal law against any government entity relevant to the contractor's ability or capacity honestly to perform

under or comply with the terms and conditions of a City contract; and/or (g) collusion in obtaining award of any City contract, or payment or approval thereunder.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.4. INITIATING THE PROCEEDINGS; COUNTS AND ALLEGATIONS.

Any charging official may initiate an administrative debarment proceeding by issuing Counts and Allegations. A charging official may issue Counts and Allegations against any contractor relating to any matter consistent with the foregoing grounds for debarment. A charging official may issue Counts and Allegations regardless whether such charging official awarded, was responsible for or was involved in any way with the underlying contract or circumstances leading to the Counts and Allegations.

The charging official shall append to the Counts and Allegations a photocopy of this Chapter 28 of the Administrative Code. Failure to append this Chapter 28, however, shall not affect the force or validity of the Counts and Allegations.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.5. SERVICE OF THE COUNTS AND ALLEGATIONS.

The charging official shall serve the Counts and Allegations on each named individual person or business entity in a manner ensuring confirmation of delivery. For example, service may be achieved by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service) or other commercial delivery service that provides written confirmation of delivery.

The charging official shall also serve the Counts and Allegations on the Controller and the City Attorney.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.6. REQUEST FOR A HEARING.

Within 15 days after receipt of the Counts and Allegations, the contractor may submit a written request for an administrative hearing. The contractor may make such request through counsel or other authorized representative. Any such request shall be filed with the Controller and copied to the charging official.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.7. FAILURE TO RESPOND TO THE COUNTS AND ALLEGATIONS.

Failure of the contractor to submit to the City a written request to be heard within the time required by this Chapter, or failure of the contractor or the contractor's representative to appear for a requested hearing that has been duly noticed, shall be deemed admission by the contractor to the Counts and Allegations. In accordance with the procedures set forth below, the charging official shall present evidence in support of the debarment to the appointed hearing officer and the hearing officer shall make

a determination on such evidence.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.8. APPOINTMENT OF THE HEARING OFFICER.

A charging official shall request either the Controller or the Director of Administrative Services to appoint a hearing officer for any debarment proceeding. If either the Controller or the Director of Administrative Services is the charging official then he or she shall request the other to appoint the hearing officer. Within 15 days of the request, the Controller or the Director of Administrative Services shall appoint a hearing officer and notify the contractor and the charging official of the appointment. The notice of appointment shall include the name of the hearing officer. The contractor or the charging official may object to the appointed hearing officer within five business days of the notification. If the Controller or the Director of Administrative Services, at his/her sole discretion, appoints a new hearing officer, then he/she shall notify the contractor and the charging official as soon as practicable but not more than 15 days after receipt of the objection.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.9. PRE-HEARING PROCEDURE.

Within 15 calendar days of his/her appointment, the hearing officer shall notify each contractor named in the Counts and Allegations and the charging department of the scheduled hearing date. The hearing date shall be set at the hearing officer's sole discretion, except the hearing must commence within 120 days of the date the charging official served the Counts and Allegations. The hearing officer may extend the 120-day period only upon good cause shown; proceeding as expeditiously as possible is in the public's best interests.

Discovery pursuant to the California Code of Civil Procedure is not applicable to this administrative debarment procedure.

The hearing officer may, in his/her sole discretion, direct any named contractor and the charging official to submit in advance of the hearing, statements, legal analyses, lists of witnesses, exhibits, documents or any other information the hearing officer deems pertinent to the determination of willful misconduct. The hearing officer may request the respective parties to submit rebuttals to such information. The hearing officer may limit the length, scope or content of any such statement, analysis, list, rebuttal, document, or other requested information. The hearing officer shall set firm due dates for all written presentations.

If the hearing officer determines, with the written agreement of each named contractor and the charging official, that the hearing shall be by written presentation, all final writings shall be due no later than 120 days of the date the charging official served the Counts and Allegations.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.10. HEARINGS AND DETERMINATIONS.

Hearings may occur in person or in writing, as set forth in the foregoing Section 28.09. If the hearing is to occur in person, the hearing officer shall specify the time and place for the charging official to present the case and for the contractor to rebut the charges. The hearing officer may, in his/her sole discretion, allow offers of proof, set time limitations and limit the scope of evidence presented based on

relevancy. Each side shall be entitled to call witnesses, and the hearing officer may allow cross-examination of witnesses. The hearing officer may ask questions of any party for the purpose of reaching a determination.

The hearing officer shall consider the evidence submitted by the charging department and the contractor. Within 15 days of the hearing, or of the date final written presentations are due, the hearing officer shall issue his/her Findings and Recommendation. The hearing officer shall serve the Findings and Recommendation on the charging official, the named contractor(s), and/or their respective counsels or authorized representatives, and shall submit the same to the Controller.

If the hearing officer finds that the named contractor has committed willful misconduct as described in the foregoing Section 28.3 and recommends a term of debarment, the charging official shall issue an Order of Debarment consistent with the hearing officer's recommendation. The charging official shall serve the Order on each named contractor, his/her/their counsel or authorized representative, if any, the City Attorney, and the Controller. An Order of Debarment under this Chapter shall be the final administrative determination by the City in the matter.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.12. TERM AND EFFECT OF ADMINISTRATIVE DEBARMENT; VIOLATION OF ORDER.

An Order of Debarment shall provide for a term of debarment not to exceed five years from the date of the Order. The Order shall prohibit any named contractor and the contractor's affiliates from participating in any contract at any tier, directly or indirectly, with or for the City and County; any contractor and the contractor's affiliates named in an Order of Debarment shall be deemed irresponsible and disqualified for the purposes of all City and County contracts. Upon such Order, any department head, board or commission may cancel any existing contract with a debarred contractor or direct the cancellation of an existing subcontract to which a debarred contractor is a party. In the event of such cancellation, no recovery shall be had on that contract by the debarred party other than for work satisfactorily completed as of the date of cancellation.

Administrative Debarment shall neither exclude nor preclude any other administrative or legal action taken by the City and County.

Violation of an Order of Debarment, such as by submission of a proposal, bid or sub-bid during the debarment period, may be considered a false claim as provided in this Administrative Code and the California Government Code.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.13. PUBLICATION AND REPORTS OF DEBARMENT.

Any Order of Debarment issued under this Chapter shall be a public record. The Controller shall maintain and publish on the City's Internet website a current list of contractors subject to Orders of Debarment and the expiration dates for the respective debarment terms. The Controller shall submit a semi-annual report to the Clerk of the Board of Supervisors that includes (a) the contractors then subject to Order of Debarment and the expiration dates for the respective debarment terms; (b) the status of any pending debarment matters; and (c) any Order of Debarment received by the Controller since the date of the last report.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

ECLtrFeb23

Hon. Ben Hur, Chair

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Dear President Hur:

The Friends of Ethics appreciates the continued outreach from your staff to solicit our views on the upcoming Commission meeting.

At the last Commission meeting, we understood that the Commission intends to address the issues Friends of Ethics and others have raised regarding changes to the CFRO. Our purpose in proposing additional reforms is to assist the Commission in its stated Mission of "Creating reform within the political process to ensure fair and equitable consideration to public policy issues."

Our proposals dealt with both the policy side of the Commission's work and the practices of how the Commission undertakes its work.

It needs to be noted that nearly all the proposals we made have been presented to the Commission repeatedly over the past three years, including in a report from the Board Budget Analyst, in two San Francisco Civil Grand Jury reports, in a number of Interested Persons meetings and in correspondence and testimony before the Ethics Commission. They have been subject to repeated deliberations by the Commission but no further action.

While we continue to urge the Commission to fully respond to each of the issues we have raised, in response to staff requests we now are writing to highlight those items that we believe can be implemented in the short time frame available before the 2015 election cycle and the budget cycle are beyond reach.

Friends of Ethics strongly supports a budget augmentation to fund a Commission Secretary on at least a part time basis. The Commission minutes indicate a number of times when the Commission has directed staff to either draft legislative proposals or return to the Commission with further information but where nothing has happened:

- In November 2012, the Commission adopted a new disclosure law applying to "Draft Committees" supporting a named potential candidate who has not filed. At the January meeting, the Commission was informed that this did not move forward because no Board sponsor was identified. This response ignores the fact that the Commission itself could have placed this measure on the ballot. The minutes do not reflect that any of this information or option was presented to the Commission. It is just such follow-up that a Commission Secretary can provide.
- In May 2013, the Commission directed that staff draft legislation to increase the blackout period for contributor contributions from six months to 12 months. There is no record that the requested draft legislation ever returned to the Commission.

- In May 2013, the Commission directed that staff should review legislation then pending at the Board to amend the lobbyist ordinance for a change that would ban lobbyist contributions. The ordinance underwent revisions, was passed and signed into law, but staff has not returned to the Commission with any response.
- There are more examples from the May 2013 Commission meeting of requests to staff to monitor developments and return to the Commission with proposed actions. While all the pending issues were resolved more than a year ago, there has been no follow through by the staff in public commission meetings.
- The charter requires that the Commission acknowledge to any person filing a complaint under the Commission's jurisdiction that the complaint was received, what action is underway, and then what the final action was. There have been repeated statements to the Commission that this charter requirement is not being met. A Commission Secretary could handle these communications as a regular duty.
- The Commission has asked for regular updates on state and federal law changes that affect the Commission's duties and options. To date there has been no report from staff to the Commission on any developments. A Commission Secretary would assist the Commission in being knowledgeable about changes in laws that affect the Commission.

Friends of Ethics also continues to support a budget that includes any necessary augmentations for making Ethics information available in languages other than English, in creating searchable databases for travel, behest, contract, gift and contribution filings, and to work with the FPPC on Form 700 forms to ensure they can be searched, aggregated and compared.

Policy Recommendations:

1. Establish a private right of action that includes receiving an amount of the judgment recovered. The Ethics staff compared the San Francisco and Los Angeles private right of action in its memo to the Commission for the May 2013 meeting but omitted mention of the Los Angeles provision that provides a private plaintiff with 50 percent of the amount recovered (LA Campaign Finance Ordinance, Sec. 49.7.38 (B)(4)). Friends of Ethics believe stronger enforcement will take place if a version of the Los Angeles model is adopted in San Francisco that requires notification to the enforcement authorities, a failure to act after a specified time, a threshold for violations, and 50% sharing in the penalties owed as done in LA.
2. San Francisco should amend its enforcement provisions to include a penalty of debarment modeled on the Los Angeles law, which states that a person who violated or to have aided or abetted a violation "shall not be eligible to bid on or be considered for a contract, extension or amendment" and applies it to an entity that has the same or similar management, ownership, or principal employees." This is a greater deterrent than a fine.
3. San Francisco should prohibit contributions from parties "who seek land-use-related approvals that exceed a certain threshold monetary amount," a

recommendation suggested by Ethics staff to “explore” in its May 2013 memo. Notably, voters overwhelmingly approved in 2000 a measure that went further, dealing with franchises, tax abatement, permits, and variances, and covering campaign contributions, gifts and other benefits. This voter-approved provision was removed in 2003 in a major rewrite of Ethics laws that failed to mention that the effect would be to eliminate this provision. While Ethics staff has maintained that the 2003 language was approved by the Ethics Commission and the Board, Friends of Ethics includes former Ethics Commissioners and Supervisors who cast votes for the 2003 measure and who confirm that they were never informed that this provision would be eliminated. This falls far short of the transparent government that voters expect in general, much less from the Ethics Commission, and, except for the length of time since it took place, could well generate calls for an investigation into the staff’s actions that essentially misled the commission, the Board and the voters. (See SF Civil Grand Jury Ethics Report, June 2014). Friends of Ethic strongly recommend that this language, consistent with subsequent court decisions, be re-enacted immediately.

4. Friends of Ethics also calls for a prohibition on contributions, gifts or behest payments from any person or entity, officers or owners of any entity, or agents of the entity that is subject to enforcement actions .Enforcement actions would include the initiation of criminal, civil, or administrative action. The prohibition on contributions, gifts, and payments would apply to an elected official who (a) has direct or indirect authority over the agency instituting the action (example: the DA in the case of a criminal prosecution; the City Attorney in the case of a civil law suit; the Mayor in the case of a department instituting an administrative proceeding) or (b) has appointed a majority of a Board with oversight of the enforcement action. The prohibition would last for the period of the enforcement action and a year following its termination
5. A prohibition on contributions or fundraising from lobbyists and those who receive a benefit from a proposed city action, similar to proposals in the American Anti-Corruption Act proposed by Trevor Potter, as well as a prohibition on fundraising by city commissioners and department heads for any candidate other than themselves. This is modeled on the Los Angeles law (see Board Budget Analyst Report, 2012).
6. Designate the Ethics Commission as the sole Filing Officer for Behest Statements, to end the practice of having Officials filing with their own office and to enable the Commission to issue late fees for untimely disclosures.

In addition, Behest statements should be expanded to provide additional disclosure beyond the minimum requirements of state law, such as information about pending business activity that the person or entity making the payment has before the City.

7. Amend CFRO Section 1.122(c) to permit transfers to and from controlled committees only if the committees were formed for the same City elective office. This reform is needed both to preserve the intent of campaign contributors and maintain the integrity of contribution limits. The latter are undermined when transfers to City office committees are permitted by, for example, County Central

Committee candidate committees, which may receive unlimited donations and corporate contributions. The current attribution rules for transfers are inadequate for safeguarding the policy objectives of contribution limits on candidate committees.

We look forward to the Commission's review and consideration of our proposals, and hope that the result will be to strengthen protection of citizens against the corrupt influence of pay-to-play politics.

Sincerely,

Larry Bush for Friends of Ethics

cc: Commissioners Keane, Renne, Hayon, Andrews, Staff Ex Dir John St. Croix, Deputy Director Jesse Mainardi

Mainardi, Jesse (ETH)

From: LARRY BUSH <sfwtrail@mac.com>
Sent: Monday, February 09, 2015 12:24 PM
To: Benedict Y. Hur; Paul Renne; Peter Keane; St.Croix, John; Mainardi, Jesse (ETH)
Subject: Ethics response to Budget Analyst report of 2012

Please provide this message to all Ethics Commissioners:

The Ethics Commission staff drafted a response to the Budget Analyst comparison of LA to SF for the May 2013 Commission meeting. Because some commissioners were not serving at that time and other interested persons may not be familiar with the report and the staff response, I am providing a link here:

http://www.sfethics.org/files/mem_to_EC_5.13.2013_and_attachment.pdf

Notably, many of the items discussed in the Report and Response are virtually identical to the issues raised by Friends of Ethics at the January 2014 meeting.

These include:

- * Banning contributions from those seeking city permits of significant size, particularly from Planning and related land use departments.

"In addition, staff believes that it is worth exploring whether section 1.126 should extend to cover parties who seek land use-related approvals that exceed a certain threshold monetary amount, with the aim of targeting larger development projects." However, we are unaware that any further exploration took place after the May 2013 meeting.

- * Prohibiting lobbyists from contributing or raising funds for officials they lobby.

"The Commission could consider several amendments to the Lobbyist Ordinance, such as banning contributions from lobbyists to City elective officers whom they lobby, and requiring an additional disclosure of fundraising activity, which Los Angeles defines as "soliciting a contribution or hosting or sponsoring a fundraising event or hiring a fundraiser or contractor to conduct any event designed primarily for political fundraising at which contributions for an elective City officer, candidate for elective City office, or any of his or her controlled committees are solicited, delivered or made." (See LA Municipal Code section 48.02.) The Commission could also consider requiring lobbyists to disclose written fundraising solicitations."⁴

Other topics given some place in the staff report, but which appear to lack a specific recommendation, include the citizens right of action, debarment as a penalty for violations, extending the contribution ban to 12 months and converting loans to contributions subject to the limit within 90 days rather than the current 180 days, searchable data base data on contracts and other issues, prohibiting city commissioners and department heads from raising funds for candidates other than themselves.

Each of these topics were raised most recently by Friends of Ethics. The existence of a staff report to the Commission, based on a Budget Analyst report that was issued two years ago and a staff response issued 20 months ago, underscores that these are not new issues but have been marinating at the Commission for a sufficient length of time to make further delay a questionable outcome.

Friends of Ethics is providing this in advance of the February 23 meeting since these issues overlap the suggestions by Commissioners for the agenda.

Larry Bush
for Friends of Ethics

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

In the second part, the document outlines the various methods used to collect and analyze data. It describes the use of statistical techniques to identify trends and patterns in the data, and the importance of using reliable sources of information.

The third part of the document focuses on the role of the auditor in the financial reporting process. It discusses the responsibilities of the auditor to provide an independent and objective assessment of the financial statements, and the importance of maintaining professional skepticism throughout the audit process.

In the fourth part, the document discusses the challenges faced by auditors in the current business environment. It highlights the increasing complexity of financial transactions and the need for auditors to stay up-to-date on the latest developments in accounting and finance.

The fifth part of the document discusses the importance of communication in the audit process. It emphasizes the need for auditors to communicate effectively with management and the board of directors, and the importance of providing clear and concise reports.

In the sixth part, the document discusses the role of the auditor in the prevention of fraud. It describes the various techniques used by auditors to identify and prevent fraud, and the importance of maintaining a high level of vigilance throughout the audit process.

The seventh part of the document discusses the importance of ethics in the audit process. It emphasizes the need for auditors to adhere to the highest standards of ethical conduct, and the importance of maintaining independence and objectivity throughout the audit process.

In the eighth part, the document discusses the future of the audit profession. It describes the various challenges and opportunities facing auditors in the coming years, and the importance of staying up-to-date on the latest developments in the field.

The final part of the document provides a summary of the key points discussed throughout the document. It emphasizes the importance of maintaining accurate records, using reliable data, and adhering to the highest standards of ethical conduct in the audit process.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

Date: February 19, 2015

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director

Re: Amendment Correction for the Campaign Finance Reform Ordinance

At its last meeting, the Commission approved a number of changes to San Francisco's Campaign Finance Reform Ordinance ("CFRO"). Among other things, the changes standardized the disclaimer requirements for independent expenditures and electioneering communications that reference candidates for City office.¹

These disclaimer requirements (e.g., "Paid for by . . .") apply to a number of different media, including mailers, TV, websites, etc. For example, the approved changes state that the disclaimer language required on smaller written communications that are *independent expenditures* must be printed in at least 12-point font.

However, staff has discovered that the approved changes erroneously omitted language imposing similar requirements for smaller written communications that are *electioneering communications*.

Thus, staff proposes that the Commission correct this omission by approving updated language for Campaign and Governmental Conduct Code section 1.162(a)(3), which concerns electioneering communication, so that it reads (additions in bold):

(3) Notwithstanding subsection (a)(2), any disclaimer required by this Section to appear on a mass mailing, door hanger, flyer, poster, oversized campaign button or bumper sticker, or print advertisement shall be printed in at least 12-point font.

Staff understands that making this correction at the Commission's February meeting will not delay consideration of the already approved CFRO amendments by the Board of Supervisors.

S:\C.F.R.O\2015\EC Mem CFRO Correct 2 18 15.docx

¹ An independent expenditure is a communication that clearly advocates for or against a given City candidate. An electioneering communication is a communication referencing a City candidate which is distributed to 500 or more individuals within 90 days of an election.

Subscription price, Five Dollars Per Annum in Advance. Single Copies, Fifteen Cents. Entered as Second-Class Matter, October 3, 1917. Postpaid. Accepted for mailing at special rate of postage provided for in Act of October 3, 1917. Authorizes sale by mail.

CONTENTS
 Original Articles
 The Treatment of Acute Infective Diseases
 The Treatment of Chronic Infective Diseases
 The Treatment of Acute Infective Diseases
 The Treatment of Chronic Infective Diseases

Original Articles
 The Treatment of Acute Infective Diseases
 The Treatment of Chronic Infective Diseases
 The Treatment of Acute Infective Diseases
 The Treatment of Chronic Infective Diseases

Original Articles
 The Treatment of Acute Infective Diseases
 The Treatment of Chronic Infective Diseases
 The Treatment of Acute Infective Diseases
 The Treatment of Chronic Infective Diseases

Original Articles
 The Treatment of Acute Infective Diseases
 The Treatment of Chronic Infective Diseases
 The Treatment of Acute Infective Diseases
 The Treatment of Chronic Infective Diseases

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December 18, 2014

BY ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Benedict Y. Hur, Chairperson/Commissioner
Paul A. Renne, Vice Chairperson/Commissioner
Brett Andrews, Commissioner
Beverly Hayon, Commissioner
Peter Keane, Commissioner
& Mr. John St. Croix, Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue
San Francisco, CA 94102

Honorable Dennis Herrera, City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Re: Common Sense Voters, SF 2010, Mark Farrell for Supervisor 2010

Dear Commissioners and City Attorney Herrera:

Thank you for the opportunity to speak at the Ethics Commission hearing on December 16, 2014, concerning the above-referenced matter. My oral remarks, together with my written communications, describe the unprecedented and phenomenal abuse of the San Francisco election process in an act of blatant cheating that victimized all the voters of the City and County of San Francisco, the voters of Supervisorial District 2, and my client, candidate Janet Reilly. The illegal expenditure by Common Sense Voters, SF 2010, almost entirely on last minute, negative smear mailings against Janet Reilly was over \$191,000. Mark Farrell's spending from his regular campaign committee totaled \$265,198. The combined spending, including the illegally spent \$191,000 totaled around \$465,000. The illegal expenditure total was about 41% of the total spent by the legal and illegal Farrell committees. But for this illegal activity, my client would have won the election. A change of fewer than 130 votes would have affected the outcome of a contest that was narrowly decided by only 258 votes.

BY FACSIMILE AND OVERNIGHT DELIVERY

Letter to San Francisco Ethics Commissioners,
John St. Croix, Executive Director
& Honorable Dennis Herrera, City Attorney
December 17, 2014
Page 2

While Janet Reilly has no forum or remedy to reverse the election outcome, you are not without causes of action or remedies. Commendably, the Ethics Commission has demanded that Mark Farrell immediately disgorge illegal funds to the City and County of San Francisco; as provided in San Francisco C & GC § 114(f).¹ However, you should not stop without imposing monetary penalties as you are authorized to do for serious violations of the San Francisco Campaign Finance Ordinance.

At the end of my brief oral remarks, I stated that possible civil or administrative action was not barred by the four (4) year statute of limitations for such actions, due to the fraudulent concealment of the parties' relationship to Mark Farrell, a candidate for Supervisor. Farrell and Farrell's committee, Common Sense Voters, SF 2010, admitted by stipulation with the Fair Political Practices Commission that Common Sense Voters, SF 2010, was actually a controlled committee of Mark Farrell.

Ample case law precedent, and the definition of fraudulent concealment in the Political Reform Act, support tolling the statute of limitations for fraudulent concealment. *Community Cause v. Boatwright*, 124 Cal. App. 3d 888, 898-903 (1st Dist. Ct. App. 1981.) [statute of limitations on civil action for violation of the Political Reform Act tolled by fraudulent concealment of material facts.]² Fraudulent concealment is defined in the Political Reform Act, which the San Francisco Campaign Reform Ordinance follows unless the local ordinance

¹ As discussed below, we believe the proper measure of the funds to disgorge is greater than the \$191,000 amount set forth in the Ethics Commission's letter to Mark Farrell dated December 11, 2014.

² The court explained the rationale for its rule as follows:

"In general the fraudulent concealment by the defendant of a cause of action tolls the relevant statute of limitations, which does not begin to run until the aggrieved party discovers the existence of the cause of action. (*Pashley v. Pacific Elec. Ry. Co.* (1944) 25 Cal.2d 226, 229.) The rationale for this rule is that such a defendant should be estopped from taking advantage of his own wrong by asserting the statute of limitations. (*Sears v. Rule* (1945) 27 Cal.2d 131, 147.) In *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, at page 324, the court expanded upon that rationale, explaining that statutes of limitation are intended in part to prevent fraud, to keep parties from asserting rights after a lapse of time has destroyed or impaired the evidence which would show that such rights never existed or had been extinguished. To hold that by concealing fraud, or by committing fraud in such a manner as to conceal it until after the party committing the fraud could plead the statute of limitations to protect itself, is to make the law which was designed to prevent fraud the means by which it is successful and secure. [citation omitted.] ***Notwithstanding the general rule of strict construction, both the 1973 Act and the PRA expressly declare that their provisions are to be liberally construed, to fully protect the public interest and accomplish their purposes. (§§ 3602, 81003.) *** It would be incongruous and inconsistent with these stated aims to hold that fraudulent concealment does not toll the statutes of limitation on causes of action arising out of either of these acts, the heart of which is the elected official's obligation to disclose." (*Id.* at pp. 899-900.)

BY FACSIMILE AND OVERNIGHT DELIVERY

Letter to San Francisco Ethics Commissioners,
John St. Croix, Executive Director
& Honorable Dennis Herrera, City Attorney
December 17, 2014
Page 3

specifically provides otherwise (SF C & GC § 1.106.). Government Code, section 91000.5, subdiv.(b) defines that term as follows:

(b) If the person alleged to have violated this title engages in the fraudulent concealment of his or her acts or identity, the five-year period shall be tolled for the period of the concealment. For purposes of this subdivision, *“fraudulent concealment” means the person knows of material facts related to his or her duties under this title and knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled under this title.* (Italics added.)

Here, the material fact – that Common Sense Voters, SF 2010 was a controlled committee of Mark Farrell – was concealed by that committee and by Mark Farrell’s main controlled committee. Not only did Common Sense Voters, SF 2010 conceal that fact, but Mark Farrell’s legal campaign committee also concealed that fact by failing to identify Common Sense Voters, SF 2010 as an additional controlled committee of Mark Farrell on page 2 of its FPPC Form 460 campaign reports filed with the SFEC. Mark Farrell participated in this concealment by executing, under penalty of perjury, the latter committee’s campaign reports which failed to disclose the related controlled committee. Thus, Farrell directly failed to perform his duties under the Political Reform Act and the San Francisco Campaign Finance Ordinance – by failing to acknowledge, take responsibility for the actions of his agents, and report accordingly.

The pattern of fraudulent concealment began with the erroneous designation of Common Sense Voters, SF 2010 as an independent expenditure committee in late October 2010, and continued until sometime in late 2014, when Christopher Lee and the committee admitted to the allegations in the FPPC’s enforcement stipulation. This concealment continued until the FPPC actually disclosed the admissions to the public. Neither Farrell nor the Common Sense Voters, SF 2010 made such disclosures, even after their negotiations leading to the FPPC stipulation and admissions therein.

While the “transformation by admission” of Common Sense Voters, SF 2010 from an independent expenditure committee to a candidate-controlled committee of Mark Farrell has exposed a plethora of technical violations of the San Francisco Ethics Ordinance and the Political Reform Act (because candidate controlled committees and independent expenditure committees have different filing obligations and file different special reports)³, the gravest failure to disclose

³ For example, candidate controlled committees report contributions of \$1,000 or more received within 16 days of an election on FPPC Form 497, while independent expenditure committees report contributions of \$1,000 or more received, and expenditures of \$1,000 or more made within 16 days of an election, on FPPC Form 496. Independent expenditure committees file special supplemental independent expenditure reports on FPPC Form 466. Candidate controlled committees have disclaimers that identify the candidate controlling the committee. Candidate controlled

BY FACSIMILE AND OVERNIGHT DELIVERY

Letter to San Francisco Ethics Commissioners,
John St. Croix, Executive Director
& Honorable Dennis Herrera, City Attorney
December 17, 2014
Page 4

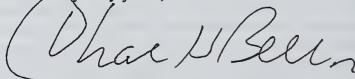
in this situation was the failure to disclose illegal campaign contributions made by seven (7) donors to Common Sense Voters, SF 2010, and the illegal receipt of such contributions by Farrell. These material facts were fraudulently concealed from the public at the time of the election and, subsequently, until their disclosure on November 10, 2014, when the FPPCs stipulation was made public.

The City Attorney and the Ethics Commission have ample time to bring civil and administrative enforcement actions against the committee and Mark Farrell for the making and accepting illegal contributions in the amount of \$215,000 from the seven (7) donors who exceeded the \$500 contribution limit applicable to the Mark Farrell and his two controlled committees. These actions should not leave unaccountable the seven (7) donors, particularly the two largest donors, Thomas Coates (at \$141,000, this host of a fundraising party for Mark Farrell on October 15, 2010 only three days later contributed \$100,000 to the Common Sense Voters, SF 2010) and Diane Wilsey (\$50,000 on October 18, 2010).

As noted above, the Ethics Commission has demanded that Mark Farrell disgorge about \$191,000. The letter demanding this disgorgement calculated the amount based on what Common Sense Voters, SF 2010 spent prior to the 2010 election. However, as a controlled committee, Common Sense Voters, SF 2010 accepted and ultimately used \$215,000 from donors whose contributions to Mark Farrell exceeded the \$500 limit. The additional \$24,000 was also spent, and by virtue of the "transformation by admission" in the FPPC stipulated settlement, those funds also were illegally obtained and spent, and should be added to the calculation of sums required to be disgorged.

We request that the Ethics Commission and the City Attorney take appropriate action to enforce the provisions of San Francisco law to vindicate the interests of the public that has been cheated and defrauded by these parties' unprecedented lawless actions and omissions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Charles H. Bell, Jr.", written over a horizontal line.

Charles H. Bell, Jr.

CHB/cfd

committees also disclose affiliated committees which are controlled by the candidate. Independent expenditure committees are required to identify the two largest donors of \$50,000 or more on the committees' communications.

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January 2, 2015

BY ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Benedict Y. Hur, Chairperson/Commissioner
Paul A. Renne, Vice Chairperson/Commissioner
Brett Andrews, Commissioner
Beverly Hayon, Commissioner
Peter Keane, Commissioner
& Mr. John St. Croix, Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue
San Francisco, CA 94102

Honorable Dennis Herrera, City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Re: Common Sense Voters, SF 2010, Mark Farrell for Supervisor 2010

Dear Commissioners and City Attorney Herrera:

This is to follow up on my previous letters to you, the last of which was on December 18, 2014, concerning the above-referenced complaint.

On December 24 and 29, 2014, I received materials from the Fair Political Practices Commission in response to a Public Records Act request for documents in their closed enforcement files in the Common Sense Voters, SF 2010, Mark Farrell for Supervisor 2010 and Christopher Lee Enforcement Proceeding, FPPC No. 10/973. I am providing copies of the relevant interview summaries and witness transcripts (identified as CPRA ENF2014- 099F, - 099G, -099M and -099N.) These documents were redacted by the FPPC.¹

¹ The FPPC records provided with this letter contain a number of redactions, which were made by the FPPC staff to comply with Government Code Sections 6454, subdivision (k), and 11183 (omitting exhibits used in the enforcement investigation that had been obtained by subpoena) and Civil Code Section 1798.42 (Information

BY FACSIMILE AND OVERNIGHT DELIVERY

Letter to San Francisco Ethics Commissioners,
John St. Croix, Executive Director
& Honorable Dennis Herrera, City Attorney
January 2, 2015
Page 2

The redacted FPPC materials make clear that Chris Lee provided services essential to the establishment of Common Sense Voters, SF 2010. Lee denied that he had referred potential donors to Rich Schlackman, the consultant and Jack Helfand, the principal officer of Common Sense Voters, SF 2010, in his own FPPC interview (CPRA ENF2014-099F, Lee interview summary at p. 2.). Lee's testimony was refuted by the testimony of Rich Schlackman and Michela Alioto-Pier, and others. The summary of testimony of Rich Schlackman (CPRA ENF2014-099G, Schlackman interview summary, at p. 2, re: Exhs. 2 & 3)² directly undercuts Lee's denial.

More significantly, Michela Alioto-Pier acknowledged activities that can only be characterized as admissions that she acted as an agent for Mark Farrell, and also closely supervised the fundraising and campaign activities of Common Sense Voters, SF 2010. This involvement commenced on September 12, 2010, when she met with Mark Farrell, Rich Schlackman, Chris Lee, Bill Barnes, Catherine Stefani, and Margaux Kelly (all of whom except for Schlackman worked for the official Farrell Committee) to discuss Alioto-Pier's support. (CPRA ENF2014-099F, Stefani interview summary, at p.3; CPRA ENF2014-099G, Michela Alioto-Pier interview summary, at p. 2 re: Exh. 3 & 4; Kelly interview summary, pp. 2-3, re: Exh. 1, and Kelly interview transcript, pp. 3-6.) Mark Farrell acknowledged attending the September 12, 2010 meeting with Alioto-Pier, Lee, and Schlackman. (CPRA ENF2014-099G, Farrell interview summary, p. 2, re: Exh.4) The Alioto-Pier interview testimony makes clear that Alioto-Pier provided contributor names to Common Sense Voters, SF 2010, and made contributor solicitations of Tom Coates and Dede Wilsey, the two largest contributors to Common Sense Voters, SF 2010, on behalf of Common Sense Voters, SF 2010, and attended house parties of the Farrell Committee, including one on October 15, 2010, just three days before Tom Coates contributed \$100,000 to the Common Sense Voters, SF 2010, and received copies of Common Sense Voters, SF 2010 campaign materials in draft and final from Rich Schlackman. (CPRA ENF2014-099G, Michela Alioto-Pier interview summary, p. 2-3; LeBlanc interview summary, p. 2.)

Practices Act of 1977) (omitting signatures and sensitive financial information). The FPPC staff also advised that they destroyed, before the closing of their enforcement files, recorded tapes of interviews of Mark Farrell, and perhaps others, as part of their "standard practice." I was unaware of such a "standard practice," but assume that the Ethics Commission and/or the City Attorney as public agencies can obtain un-redacted information in the FPPC's possession, including correspondence between the FPPC staff and attorneys Jim Sutton (for Mark Farrell), Kevin Hannegan (for Rich Schlackman), Joe Sandler (for Natalie LeBlanc), Joseph Alioto Jr. (for Michela Alioto-Pier) and the unidentified attorney for Chris Lee, that may be relevant to your own investigation in this matter.

² References are made to exhibits identified by number in the FPPC interview summaries described herein. The FPPC redacted their own references to the exhibit titles or names, and did not supply the exhibits themselves, as noted in footnote 1 above.

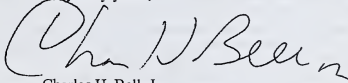
BY FACSIMILE AND OVERNIGHT DELIVERY

Letter to San Francisco Ethics Commissioners,
John St. Croix, Executive Director
& Honorable Dennis Herrera, City Attorney
January 2, 2015
Page 3

Moreover, it appears that Margaux Kelly, Farrell's campaign staffer, gave potential donor contact information to Chris Lee, who transmitted it to Jack Helfand for use by Common Sense Voters, SF 2010. (Compare CPRA ENF2014-099G, Farrell interview summary, at p. 3, re: Exh. 8 & 12 and CPRA ENF2014-099G, Kelly interview transcript, at pp. 37:20-39:5, re: Exh.12.)

The public information disclosure indicates that the FPPC failed to interview Tom Coates or Dede Wilsey, notwithstanding that Michela Alioto-Pier admitted soliciting Coates and Wilsey to contribute to Common Sense Voters, SF 2010, and that Farrell denied talking to Coates at all but acknowledged meeting for "two hours" with Dede Wilsey on October 6, 2010. However, Coates had hosted a house party for Farrell on October 15, 2010, and then gave \$100,000 to Common Sense Voters, SF 2010 three days later. In addition, Wilsey gave \$50,000 to Common Sense Voters, SF 2010 on October 18, 2010, less than two weeks after meeting with Farrell for two hours on October 6, 2010. (CPRA ENF2014-099G, Farrell interview summary, at p. 3, re: Exh. 16 & 17.) Further, Farrell's campaign manager Margaux Kelly denied, in an un-redacted portion of her interview, that Coates had made a contribution to the official Farrell Committee. (CPRA ENF2014-099M, Margaux Kelly interview transcript, at p. 21.) However, the Facebook pictures of that event suggest that its value likely would have been \$500 or more, an amount that is the threshold for reporting of non-monetary contributions for home events. (See, Gov. Code, section 82015(f). If that is so, Coates also failed to disclose (and may have violated) the \$500 per-election limit (which he exceeded by a city mile with his \$141,000 in contributions to Common Sense Voters, SF 2010), now an admitted Farrell candidate-controlled committee.)

Very truly yours,

A handwritten signature in dark ink, appearing to read "Charles H. Bell, Jr.", with a stylized, cursive script.

Charles H. Bell, Jr.

CHB/cfd
Enclosures as stated.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 10
REPORT DATE: 10/26/12 PAGE 1 of 3 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers [REDACTED]

DATE SIGNED: 11/6/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: In-Person
Person(s) interviewed: Catherine Stefani
Work address: [REDACTED]
Work phone: [REDACTED]
Home address: [REDACTED]
Home phone: [REDACTED]

VI NARRATIVE:

On 10/04/12 at 09:00, Senior Commission Counsel (SCC) Galena West and I interviewed Catherine Stefani, former Legislative Aide to Supervisor Michela Alioto-Pier (MAP) and current Legislative Aide to Supervisor Mark Farrell, at the San Francisco Ethics Commission located at 25 Van Ness Avenue, San Francisco, CA 94102. Also present were Catherine Argumedo and Garrett Chatfield of the SF Ethics Commission. The following is a summary of this interview with Stefani:

Stefani's current job entails analyzing public policy, preparing and creating policy to come from Farrell, handling constituent issues, and overseeing the office staff. She has been working for Farrell since 01/08/11. Previously she worked for MAP and had the same job duties. MAP endorsed Farrell for her District 2 supervisor seat when it was determined that she could not run for another term. MAP did not loan her staff to the Farrell campaign. Stefani did volunteer her time to the Farrell campaign on the weekends where she did precinct walking and passed out flyers. [REDACTED]

[REDACTED] The emails are attached to this report. The following is Stefani's analysis of the emails:

- Exhibit 1- [REDACTED]

[REDACTED] Margaux Kelly was Farrell's campaign manager and is currently a Legislative Aide for Farrell, Bill Barnes was Stefani's colleague for a year while she worked for MAP, and Schlackman refers to Rich Schlackman who is a political consultant who worked for MAP at various

times. Stefani recalls the meeting that the email references and remembers talking about window signs, and to "touch base" on what was happening with the Farrell campaign. She does not recall what "HP locations" means. Stefani stated that meeting at MAP's residence was unusual and that it was the only time that it happened.

- Exhibit 2- [REDACTED] Chris Lee was Farrell's political consultant. Stefani said that it "appeared to be the case" that the Farrell campaign was drafting an endorsement to come from MAP. Stefani said that her role was to make sure that MAP approved of the language that the Farrell campaign used.
- Exhibit 3- [REDACTED] Stefani agreed that this email referred to the email blast that was referenced in the Exhibit 2 email.
- Exhibit 4- [REDACTED] Stefani was unfamiliar with this email. She was unsure if MAP regularly gave out her donor lists to others.
- Exhibit 5- [REDACTED] Natalie LeBlanc worked for Rich Schlackman. Suki Kott was a volunteer in MAP's office and a friend of Stefani. Stefani believes that this email refers to a mailer that the District 2 Democratic Club is sending out. She is unaware of whether MAP had a part in the fabrication of the mailer. Barnes was working with the Club on the project.
- Exhibit 6- [REDACTED] Stefani is unfamiliar with Moran and does not know anything about the doorhanger that the email references.
- Exhibit 7- [REDACTED] Stefani does not know Angel Chan. She has met Coates around three times and the only thing she knows about him is that he is a District 2 resident. She knows Barboza and LeBlanc. Stefani was MAP's scheduler so she would receive numerous emails, such as this one, to coordinate meetings with MAP. Stefani would prep MAP for meetings. Occasionally there would be meetings that Stefani would not need to prepare MAP for; this was one of those meetings. Stefani would mainly prep MAP on city hall items. Stefani does not know why MAP would be meeting with campaign personnel (Schlackman) while she was not running for any office at that time. She does not know Jack Helfand. Stefani assumed that since MAP knows Schlackman then she would know what this meeting is about. She does not recall ever scheduling a meeting between Helfand and MAP.
- Exhibit 8- [REDACTED] Ungerleider is the president of the Marina Community Association. She would also volunteer in MAP's office and on Farrell's campaign. Stefani first met Kelly through the Farrell campaign. She said that they would sometimes email back and forth. Stefani said that Farrell did not contact her but she might have scheduled MAP for a "coffee" with Farrell.
- Exhibit 9- [REDACTED] Stefani is unaware that MAP was putting

out her own material endorsing candidates in the 2010 elections. She knew that LeBlanc, Schlackman and MAP were talking "perhaps" frequently during the final month before the election even though MAP was not running for office at this time. Stefani also stated that she did not believe that there were any ballot measures that MAP was endorsing.

- Exhibit 10-

Stefani did not want to speculate but thinks that "the boss" refers to Farrell. Stefani attended the celebration that the email chain refers to. Schlackman may have picked up the tab for the dinner. Farrell did not come to the celebration. Schlackman did come to the celebration. She does not recall anyone talking about CSV. She does not recall the discussions from that celebration. Stefani remembers having to call a cab for Schlackman, and she remembers that the food was good.

Stefani recalls knowing that there was an IE committee (CSV) for Farrell. Stefani remembers having conversations with MAP about the IE but not with any specificity. Stefani was never at a meeting where an IE committee was discussed, to her knowledge. SCC West brought up the meeting that the email in Exhibit 1 documents; Stefani does not know why Schlackman, a political consultant, would be at a meeting with MAP and Farrell when Lee was present and already Farrell's consultant. Stefani does not recall any side meetings taking place during the meeting on 09/12/10. SCC West asked whether it was discussed at that meeting if Schlackman would be in charge of the IE committee and Stefani replied, *"I can't say that I recall that specifically, that he would be in charge of an Independent Expenditure."* SCC West then asked, "How about generally?" To which Stefani replied, *"Generally, like to give campaign advice or something like that, perhaps."*

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 9
REPORT DATE: 10/26/12 PAGE 1 of 3 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers [REDACTED]

DATE SIGNED: 10/31/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes (CD Attached)
Manner of interview: In-Person
Person(s) interviewed: Chris Lee
Work address: [REDACTED]
Work phone: [REDACTED]
Home address: [REDACTED]
Home phone: [REDACTED]

VI NARRATIVE:

On 10/03/12 at 15:45, Senior Commission Counsel (SCC) Galena West and I interviewed Chris Lee, Partner at Town Square Consulting and campaign consultant to the Mark Farrell campaign, at the San Francisco Ethics Commission located at 25 Van Ness Avenue, San Francisco, CA 94102. Also present were Catherine Argunedo and Garrett Chatfield of the SF Ethics Commission. The following is a summary of this interview with Lee:

Lee created Town Square Consulting in 2009. He was in charge of direct mail and campaign strategy. When it was determined that the incumbent, Supervisor Michela Alioto-Pier (MAP), could not run again, it changed the entire makeup of the 2010 election. When MAP was still running, the Farrell campaign was thinking about dropping out due to low poll numbers. [REDACTED]

The emails are attached to this report. The following is Lee's analysis of the emails:

- Exhibit 1- [REDACTED]

According to Lee, Catherine Stefani and Bill Barnes worked for MAP and Margaux Kelly was Farrell's campaign manager. Schlackman is Rich Schlackman, a political consultant in SF. Lee does not recall the meeting. At this point, SCC West told Lee that perhaps it would help to jog his memory if she told him that the meeting took place at MAP's residence and that it was about campaign strategy. Lee responded that the Farrell campaign was going to do a mail piece with MAP's endorsement. Lee stated that he wrote the endorsement. Lee stated that he did

not have a lot of meetings with MAP, just a few when they were setting up the mailer. The list that the email from Margaux Kelly to Farrell and Lee references is a list of donors to the MAP campaign. The list was to be used to for the eblast to be sent out that Lee drafted to come from MAP.

- Exhibit 2- [REDACTED] Jack Helfand is a donor of Farrell. Lee then stated, "*I found out later that he was the Treasurer of the Independent Expenditure Committee.*" SCC West says, "Is that Common Sense Voters (CSV)?" Lee then states, "*Is that the name of it? I think that was the name of it.*"
- Exhibit 3- [REDACTED] Farrell did not ask Lee to contact Helfand. SCC West asked Lee if Helfand had any previous political experience in putting together an IE and Lee stated that Helfand "had contacted a couple of people on the peninsula about it." Lee thought it was odd for Helfand to contact people on the peninsula.
- Exhibit 4- [REDACTED] Lee stated that he did not mean that a consultant was chosen for Helfand even though Lee wrote, "We have a consultant on board that you will need to meet with and then I have to step out of the picture." Lee said that he really meant that there were many consultants that may do work for an IE committee, but the majority of which would probably be busy at that particular time. Lee said that he did not mention any specific San Francisco consultants to Helfand. Lee said that the list that he attached for Helfand was a list of donors who had already donated to the Farrell campaign. SCC West asked Lee if it was possible that the sentence about having a consultant on board was misspeak. Lee responded, "*Could have been, probably meant to say you should call consultants and there might have been someone that you could talk to.*" (See Exhibit 6 below, the email on 09/13/10 contradicts this statement.)
- Exhibit 5- [REDACTED] Lee was unaware if those people donated to CSV. There were two additional email addresses that were not on the donor list: [REDACTED] and [REDACTED] Lee identified the first address as that of Rich Schlackman and the other address as Natalie Leblanc, an employee of Schlackman.
- Exhibit 6- [REDACTED]
[REDACTED]

Lee stated that he must have heard four days later that Schalckman was on board. Lee says he must have heard it from somewhere else because San Francisco is a small town. At this point Lee [REDACTED] said, "*So you can talk to Rich, don't talk to me.*" SCC West asked Lee why he would send Helfand an email confirming who Helfand hired. Lee responded, "*You know I think I probably meant to say this is the guy who I have heard that will be running your campaign and it's Rich Schlackman. That's probably what I meant by that*" When informed that it appeared that Lee reached out to Schlackman, Lee stated, "*No I wouldn't have reached out to Rich, or I don't think I would have.*" Lee was asked why he would want Helfand to call him as soon as he could. Lee stated, "*That was probably again to remind him that I'm out of this and you can't talk to me anymore once you form this committee I am no one to talk to.*" Lee was sending Helfand an email to

tell him who he thought would be running his campaign and asked Helfand to call him so that Lee could tell Helfand not to call him anymore.

- Exhibit [REDACTED] Ren Riley was one of Farrell's donors. Helfand was aware that he could not talk or coordinate with the Farrell campaign. Lee said that he made Helfand aware that he could not coordinate with the Farrell campaign.

- Exhibit 8 [REDACTED] Lee said he meant for Kelly to send him Lamond's number and then he would forward it to Helfand. Lee then said, "If I did, I did."

Lee did not feel that Farrell was in contact with Helfand during the election cycle. Lee does not remember meeting Helfand face to face. He might have met Helfand before at a fundraiser. Helfand used to work with Farrell. Lee stated that MAP and her staff may have had conversations and contact with CSV, but he could not be certain. Farrell may have had conversations with MAP about the on goings of the Farrell campaign. Lee remembers seeing Schalckman at the Golden Gate Yacht Club but does not think that they spoke of CSV.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 8
REPORT DATE: 10/26/12 PAGE 1 of 2 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers

DATE SIGNED: 10/31/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: In-Person
Person(s) interviewed: Bill Barnes
Work address: [REDACTED]
Work phone: [REDACTED]
Home address: [REDACTED]
Home phone: [REDACTED]

VI NARRATIVE:

On 10/03/12 at 14:30, Galena West and I interviewed Bill Barnes, former Legislative Aide to San Francisco Supervisor Michaela Alioto-Pier (MAP), at the San Francisco Ethics Commission located at 25 Van Ness Avenue, San Francisco, CA 94102. Also present was Catherine Argumedo and Garrett Chatfield of the SF Ethics Commission. The following is a summary of this interview with Barnes:

Barnes has been friends with MAP since 1998. During MAP's tenure as Supervisor, Barnes was one of her Legislative Aides. Once it was determined by the courts that MAP would be unable to run again for Supervisor due to term limits, MAP began to endorse Mark Farrell to take her place on the Board of Supervisors. [REDACTED]

[REDACTED] The emails are attached to this report. The following is Barnes analysis of the emails:

- Exhibit 1- [REDACTED]
[REDACTED] This meeting took place at MAP's residence on Vallejo Street. Barnes does not recall the exact details of the meeting. Barnes said that Catherine Stefani works for MAP, Chris Lee works as a consultant to Farrell, Margaux Kelly is Farrell's campaign manager, and Richard Schlackman is a political consultant that MAP has dealt with in the past.
- Exhibit 2- [REDACTED] MAP was often asked to endorse things. It was common for MAP to have the person who wanted the endorsement

to draft the letter or email and then submit it to MAP for review. This email was referencing an eblast that the Farrell campaign was drafting to come from MAP.

- Exhibit 3- [REDACTED] It was fairly common to share donor lists with other candidates and Barnes said he was happy to do so. Barnes said that MAP knew about him giving the donor list to the Farrell campaign and he cc'd MAP on the email to Kelly that had the list attached.
- Exhibit 4- [REDACTED] Barnes recalls that he would prep officials before the meetings so that there would be no wasted time or miscommunication. In this particular instance he was telling Kelly to make sure that she had a list ready for MAP of what Farrell would need from her when they were meeting later that day. Barnes did not attend the meeting.
- Exhibit 5- [REDACTED]: Suki Kott started the District 2 Democrats which endorsed Mark Farrell. Natalie LeBlanc works for Schlackman. Barnes does not recall what his comments that the email references would have been about. On the 10/21/10 email from MAP to Peter Moran of Winning Directions, Barnes does not know what MAP would have been referencing about when she wrote "common sense" [sic]. "Common Sense" is a phrase that is popular in San Francisco with moderates. He cannot recall if Winning Directions had done work for MAP in the past.
- Exhibit 6- [REDACTED] Barnes does not know what MAP would have been fundraising about. He said it was not uncommon for her to help others with slate mailers. Tom Coates was a major donor to various ballot measures for SF.

Barnes is unfamiliar with Jack Helfand. He heard Helfand's name after the 2010 election was over. Barnes' understanding was Helfand was a friend of Farrell or someone that Farrell grew up with. Barnes has never met Helfand. Toward the end of MAP's term, Barnes was in-charge of packing up the office and getting some last minute projects and legislation finished. Barnes does not believe that giving a list to other campaigns is disclosed as a non-monetary contribution. Barnes does not believe that it was a personal issue with MAP opposing Janet Reilly. It was simply a matter of MAP feeling that Reilly's politics were too liberal for District 2. MAP became upset with Barnes after the 2010 election because Barnes was working on Ed Lee's mayoral campaign. Barnes said that the Common Sense Voters independent expenditure committee was an under-the-radar committee and did not really affect Barnes in his duties at city hall, so he did not pay much attention to the committee.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 24
REPORT DATE: 02/25/13 PAGE 1 of 2 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers [REDACTED] DATE SIGNED: 2/25/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: Telephonically
Person(s) interviewed: Mark Farrell (Represented by James Sutton)
Work address: [REDACTED]
Work phone: [REDACTED]
Home address: [REDACTED]
Home phone: [REDACTED]

VI NARRATIVE:

On 02/22/13 at 10:30, I interviewed Mark Farrell, San Francisco District 2 Supervisor telephonically. Farrell is represented by Jim Sutton who was present during the interview. Also present was Margaux Kelly, Farrell's Legislative Aide and former campaign manager of the Farrell campaign in 2010. The following is a summary of this interview with Farrell:

- Exhibit 1- [REDACTED] Farrell believes that the meeting that Lee stated that he spoke with Michela Alioto-Pier (MAP) about Tom Coates at, was the same meeting referenced on the 09/09/10 email (Tab 2). Farrell recalls talking to MAP at the meeting about having Coates host a house party for Farrell. Farrell was only interested in Coates hosting a fundraising event and possibly writing a check to help out his campaign. Coates was a good personal friend of MAP and MAP told Farrell that she would approach Coates about helping Farrell's campaign. Farrell does not recall having a conversation with Lee about approaching MAP to help solicit help from Coates. The list that the 09/11/10 email refers to is not the same list as the one in the 09/12/10 email from Lee to Helfand. Farrell reiterated that he had never seen, nor spoke with Lee about the list that Lee sent to Helfand on 09/12/10. The list that the 09/11/10 email referred to was a list of donors that was known to the Farrell campaign and which the campaign would send to anyone trying to help raise money for the campaign. Farrell would not hesitate to pass the list on to anyone because it was in the interest of his campaign to do so. Sutton chimed in and stated that he wanted to be completely clear that the email that Lee sent on 09/12/13 (Tab 3) with the list attached with targeted names was not the same list that was being discussed in the email in Exhibit 1.

The list that Farrell and Lee were referencing on the Exhibit 1 email was just the donor list that was in the Farrell campaign's database. It was not the spreadsheet that was tailored to specific donors in the Lee/Helfand email (Tab 3). Farrell did not talk to Helfand about either list that was sent by Lee and knew nothing of the email and list that Lee sent to Helfand on 09/12/10.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 23
REPORT DATE: 01/30/13 PAGE 1 of 4 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers

DATE SIGNED: 2/11/13

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: Telephonically
Person(s) interviewed: Michela Alioto-Pier (Represented by Joseph Alioto)
Work address:
Work phone:
Home address:
Home phone:

VI NARRATIVE:

On 01/30/13 at 11:00 (20:00 in Rome), Senior Commission Counsel (SCC) Galena West and I interviewed Michela Alioto-Pier (MAP) telephonically. MAP currently resides in Rome, Italy and was the incumbent 2010 San Francisco District 2 Supervisor. MAP is represented by Joe Alioto (Alioto) who was present during the interview. Also present was Tom Pier, MAP's husband. The following is a summary of this interview with MAP:

The two leading candidates in the 2010 San Francisco District 2 Supervisor race were Mark Farrell and Janet Riley. The race was a contentious one. MAP was deemed ineligible to run again because of term limits in San Francisco. MAP decided to place her support behind Farrell and give him her endorsement. MAP does not remember the exact date that she met Farrell. MAP met with five or six people that were interested in running for the District 2 position. MAP said that Farrell was the most impressive candidate out of the people that she had spoken with. Farrell reminded MAP a lot of herself. Farrell had grown up in the same neighborhoods as MAP, went to the same schools that MAP had attended, and grew up in the Marina District where MAP had spent much of her time as well. MAP felt that she and Farrell had a lot in common and she really liked him. Farrell was a well-spoken person and was always very respectful of MAP. MAP knew that if she was not allowed to run again, Farrell would be the person that she would endorse.

The emails were labeled numerically as exhibits. I provided the exhibits to Alioto by electronic attachment to an email. Alioto

forwarded the exhibits to MAP. The exhibits are attached to this report. The following are MAP's remarks about the exhibits:

- Exhibit 1- [REDACTED] MAP did not know who Helfand was at the time of this email. MAP became aware of Helfand when the Independent Expenditure (IE) committee was established. [REDACTED]
[REDACTED] MAP stated that Farrell did not mention anything to her regarding Helfand. MAP did know Chris Lee at the time and she did have conversations with him but does not recall the subject of those conversations. MAP would speak to Lee about Farrell's campaign.
- Exhibit 2- [REDACTED] MAP does not recall having a conversation with Farrell about Lee reaching out to Helfand and providing Helfand with information on how to form an IE. MAP does not remember any conversations with Lee where he talked about providing IE information to Helfand. MAP had met Helfand before but did not know anything about him. MAP was then asked what she did remember about the formation of Common Sense Voters (CSV). MAP recalls that CSV was formed sometime in October of 2010 and there were questions about where money might come from. She remembered some vague conversations about people that might be possibly interested in forming an IE for Farrell. MAP had conversations with Tom Coates where Coates had told her that he would be interested in helping Farrell win by helping an IE. MAP believed that Richard Schlackman was going to set up the IE. Schlackman is a consultant in San Francisco who had done a lot of IE campaigns. MAP had talked with Schlackman about the potential interest in an IE for Farrell. MAP has known Schlackman since 1996 and has done work on MAP's committees.
- Exhibit 3- [REDACTED] MAP does not recall that specific meeting. Barnes and Stefani were staffers of MAP. MAP did not speculate why Schlackman would have been invited to the meeting. MAP stated that she was not running for office at this time and reiterated that Schlackman was a friend. MAP said that by reading the email, she assumes that the meeting would have been about Farrell's campaign. MAP assumes that this meeting took place after she endorsed Farrell and that she wanted to make sure that Farrell and his staff knew how to run a campaign properly. MAP was asked if she remembers any other meetings like the one referenced in the email. MAP stated that she does not remember.
- Exhibit 4- [REDACTED] MAP does not know what meeting Lee is referring to in the email. She does not think that he is referencing the meeting in Exhibit 3. I asked MAP if she ever recalled Lee talking to her about Coates in any meeting and she stated that it would make sense that she would have conversations about Coates with Lee because Coates was one of MAP's biggest supporters. MAP does not think that Coates had talked to her about becoming involved in an IE until later.
- Exhibit 5- [REDACTED] MAP does not know anything about the email. MAP does not know where the list that was attached to the email came from. The only person that MAP knew on the list was Chris Gruwell, who was a fundraiser for Platinum Advisors.

- Exhibit 6- [REDACTED] MAP did not know why Lee would have been telling Helfand that Schlackman was going to run the IE. I asked MAP to tell us again how Schlackman became involved. MAP said that Schlackman did not like Janet Riley at all. MAP was fairly certain that Schlackman ran a negative IE against Riley when Riley was running for Assembly. MAP felt that Schlackman became involved because he wanted to. [REDACTED]

[REDACTED] MAP stated that she did not recall the discussion.

- Exhibit 7- [REDACTED] When I asked MAP why she felt that Schlackman would be concerned about her involvement in the IE, Alioto interjected and stated that I should ask questions about things MAP did or how she felt, not questions about what someone else was thinking. Alioto then went on to demand why the author of the complaint (Charles Bell, Jr.) was allowed to cite a newspaper article that had misquoted MAP. SCC West said that his point about the line of questioning was well taken and I agreed to rephrase. MAP was asked if she had any conversations with Schlackman or LeBlanc about keeping her involvement with the IE a secret. She responded that she did not have any conversations of that nature.
- Exhibit 8- [REDACTED] MAP is not certain that her staff sent her fundraising list to the Farrell campaign, but assumes that her staff did. MAP does not remember signing off on the eblast that was sent out from the Farrell campaign. MAP stated that she probably did direct her staff to send the fundraising list to the Farrell campaign.
- Exhibit 9 was skipped because we discussed the subject in Exhibit 8.
- Exhibit 10- [REDACTED] The events noted in the email would have been places where MAP would have showed up and campaigned for Farrell. MAP does not recall how many events she went to where she showed up and supported Farrell.
- Exhibit 11- [REDACTED] Bill Barnes and Catherine Stefani did not speak with MAP about the slate card that was referred to in the emails.
- Exhibit 12- [REDACTED] I asked MAP the following question, "Did you have any part of facilitating Tom Coates' contribution to CSV?" MAP responded, "*Oh yeah, I asked him for it.*" MAP assumed that the reason that Schlackman knew the contribution was coming was because MAP facilitated it.
- Exhibit 13- [REDACTED] MAP was not kept apprised of the on goings of CSV regularly. MAP felt that this was the only email where Schlackman told MAP of the basic plan of CSV. MAP did not remember getting this email and recalled that the strategy of CSV was not something that she "was really in the know about." MAP thought the reasoning behind this email was "*Tom had written a very large check and I think he wanted to know where his money, how it was being spent, and uh, we just asked for an idea so we could let him know.*" MAP reiterated that she was not a part of coming up with the plan.
- Exhibit 14- [REDACTED] I told MAP that I believed that this email was referring to her facilitation of the Coates' contribution and she agreed. MAP then stated, "*I was certainly responsible for getting Tom's contribution and Dede's contribution.*"

MAP was told that Schlackman informed us during his interview that she was in-charge of fundraising for CSV. MAP further stated, *"So I think that when he (Schlackman) says that I'm in-charge of it (fundraising), there is no question that I brought in the bulk of the mo, the bulk of it from the Tom Coates and Dede Wilsey checks."*

- Exhibit 15- [REDACTED] MAP recalled that she was brought into the email chain because she was going to sign off on a message that was going to be sent out to voters. She was checking for accuracy and content since the message was to come from her. MAP was told that the Alliance was interested in doing an expenditure for Farrell and that is how the door hanger came to fruition. The Alliance started during the 2010 election cycle and its full name was The Alliance for Job Growth. The Alliance was a group of organizations that came together to help moderate candidates. MAP felt that the Alliance was unusual in that it was made up of the business community, the Chamber of Commerce, and certain labor organizations. The Alliance would support candidates that it felt best represented its interests. MAP thought that Coates paid for the door hanger and used CSV to broker the expenditure.
- Exhibit 16- [REDACTED] This is the only time that Schlackman deferred to MAP to make a decision regarding CSV. MAP believes that the only decision MAP made regarding the doorhanger was the background color. MAP did not make decisions regarding CSV. She only raised money from Coates and Wilsey. MAP did not tell Schlackman how to spend the money. She assumes that the decisions of CSV would have been made by Schlackman and Helfand. The only thing that she can recall approving was a letter that was to come from her and was to be printed on the doorhanger.
- Exhibit 17, 18, and 19 were skipped due to the exhibits being redundant.
- Exhibit 20- [REDACTED] MAP does not know why Fazio would send an email asking for a disclaimer for the doorhanger, a contact for the walkers, and a check to her. MAP does not remember this email. MAP was asked if Winning Directions (WD) was contacting her regarding content or payment. MAP reiterated that she remembers approving the letter for the doorhanger but does not remember writing the letter. MAP was asked why WD would have been in contact with MAP about payment. MAP replied that Coates may have made his final contribution for the doorhanger. If that were the case, then she would have been the person to contact Coates for payment. MAP thought that the Alliance was going to take care of the doorhanger. This whole ordeal was about Fazio and the Alliance getting a doorhanger out to help the moderate candidate in District 2. The Alliance may have not been able to pay for the doorhanger in the end and Coates ended up paying for it. MAP does not know why she forwarded the email to Schlackman. MAP then asked if CSV paid WD for the doorhanger and was informed that CSV did pay for the doorhanger. MAP then responded that that is probably the reason that she forwarded the email to Schlackman.
- Exhibit 21- [REDACTED] [REDACTED] Coates put over \$100,000 in and wanted to see if the expenditures were working.

SCC West asked Alioto if he would accept service of documents on behalf of his client, MAP. Alioto [REDACTED] said he would not. MAP declined to give Enforcement her address in Italy and Alioto said if we have documents for her then we should send them to the Embassy in Rome.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 22
REPORT DATE: 12/28/12 PAGE 1 of 2 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers DATE SIGNED: 12/31/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: In-Person
Person(s) interviewed: Peter Moran
Work address:
Work phone:
Home address:
Home phone:

VI NARRATIVE:

On 12/18/12 at 11:30, Senior Commission Counsel (SCC) Galena West and I interviewed Peter Moran, Chief Operating Officer for Winning Directions (WD), at the FPCC office. The following is a summary of this interview with Moran:

Moran does part time work for WD currently and also does various side jobs to make a living. In 2010 Moran primarily worked for WD. Moran stated that he runs WD and that Tony Fazio is the owner of WD. WD used to be much larger, but Moran stated that partnerships come and go and WD was affected by the downturn in the economy in 2008. At one point WD had around 70 employees nationally but now the company is a shell of it's former self. In 2010, WD worked on two or three campaigns in the Bay Area for the November election. WD is a mail consulting firm which is hired by campaigns and organizations to put out various types of print. A general campaign consultant would contact WD to put together a print piece. When a committee would ask WD to create a mailer, WD would coordinate the design, the print, and the mail house and provide expertise to the client. When asked about Common Sense Voters (CSV) Moran did not recall the name of the entity, just that Richard Schlackman was speaking on the entity's behalf. Fazio and Schlackman had done work together for 25-30 years. Sometimes WD was competitors with MSHC Partners (MSHC) and sometimes the two firms worked on projects together.

[REDACTED] The emails are attached to this report. The following are Moran's comments on the emails:

- Exhibit 1- [REDACTED]
[REDACTED] Moran believes that Schlackman was the one who approached WD to do work for CSV. I pointed to the invoice where it said "Precinct walkers \$25,388.09" and asked Moran how this worked. Moran stated that sometimes the walkers were necessary if a committee did not have a large volunteer base or if the committee was an Independent Expenditure (IE) committee because the IE could not be in contact with staff of the candidate controlled committee. Fazio was part of the San Francisco Alliance for Jobs and Sustainable Growth (the Alliance) which is an ongoing organization that is about bringing labor and business together to facilitate job growth. Moran stated that the Alliance would coordinate with other IEs so that there would not be redundant expenditures. Moran was not in the room when the decision was made, but he believes that Schlackman used the Alliance resources for precinct walkers and WD facilitated this because WD received payment for the walkers.
- Exhibit 2- [REDACTED] Moran recalls working with Supervisor Michela Alioto-Pier (MAP) regarding a door hanger for CSV. MAP provided input regarding the design of the door hanger. When asked whether Schlackman or MAP would have the final say regarding the door hanger, Moran stated, "*I think that he essentially handed over the reigns to her.*" Moran felt this way because he dealt MAP instead of Schlackman. Scott Hart worked for WD and helped out with the Alliance. Hart worked with Chris Lee until Moran "pinched" Hart from him. Lee met Hart in Washington, D.C. several years before 2010. Fazio and Lee are friends and are both from Rhode Island.
- Exhibit 3- [REDACTED]
[REDACTED] Vince Courtney is the acting director of the Alliance. The creation of the Alliance was Fazio's idea. Moran did not know if MAP was the one who made CSV write WD a check.

I asked if Moran recalled doing work for the two other candidates that Lee had been consulting for and Moran responded that he remembers there was some design work done for one of the candidates as well as the preliminary design of a door hanger. When WD believed that it was going to do IE work, WD stopped doing work for any candidate controlled committees. [REDACTED]

[REDACTED] Moran responded that he and Lee were friends and they never spoke about CSV. During the calls Moran would give Lee direction about "how to do things but not what to do." Moran is confident that Lee would call Hart also and ask him the same things because Moran felt that Lee was "needy." Moran never heard of Jack Helfand. Moran was not involved in the money side of WD. Moran believes that Fazio and Schlackman would be the ones to discuss payment to WD. WD does not do fundraising and Moran said that WD is a "spender not generator." Moran thought that Schlackman could have been coordinating

between Fazio and MAP. Moran does not recall doing any work for MAP during his 12 years with WD. When coordinating the precinct walkers, the conversation would have been between Courtney, Schlackman and Fazio. The reason that walkers were used instead of direct mail was because of the proximity to Election Day. Schlackman brought MAP into the email chain. The Alliance did end up the endorsing Mark Farrell.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 20
REPORT DATE: 12/27/12 PAGE 1 of 3 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers [REDACTED] DATE SIGNED: 1/7/13

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: In-Person
Person(s) interviewed: Richard Schlackman (Represented by Kevin Hennigan)
Work address: [REDACTED]
Work phone: [REDACTED]
Home address:
Home phone:

VI NARRATIVE:

On 12/05/12 at 13:00, Senior Commission Counsel (SCC) Galena West and I interviewed Richard Schlackman, former partner of Malchow, Schlackman, Hoppey and Cooper (MSHC), at the law offices of Hansen Bridget LLP located at 425 Market Street, 26th Floor, San Francisco, CA 94105. Schlackman is represented by Kevin Hennigan who was present during the interview. The following is a summary of this interview with Schlackman:

In 2010, Schlackman was a partner at MSHC and stated that he worked on Common Sense Voters (CSV). Schlackman ran what he called the "paid communication" part of the campaign. As far as fundraising for the CSV, Schlackman said that he picked up checks but that was about as far as it went. Natalie LeBlanc worked on CSV and took instruction from Schlackman. There may have been others that worked with LeBlanc on CSV but he did not know. When asked if he provided the strategy of CSV, Schlackman replied, "Yes, I did." Schlackman stated that he was also working with Jack Helfand. Helfand was in-charge of fundraising and approving all of MSHC's work for CSV. MSHC made Helfand sign off on everything that MSHC did. Schlackman would come up with the strategy of CSV and Helfand would make comments on it. LeBlanc would send Helfand the description of the expenditure and the price and Helfand would fax his signature on an approval letter to LeBlanc.

[REDACTED] The emails are attached to this report. The following are Schlackman's comments on the emails:

- Exhibit 1- [REDACTED] Schlackman knows Bill Barnes and Catherine Stefani. He does not remember attending the meeting.
- Exhibit 2- [REDACTED] When asked how he became the consultant of CSV, Schlackman replied, "*If my memory serves me correct, Michela called me.*" He does not recall what was said. Schlackman had done work previously for Supervisor Michela Alioto-Pier (MAP). Schlackman said that he never met with Helfand in-person. Schlackman knows Chris Lee and Lee might have said something to the effect of, "Are you available to do something like that?" (Referring to work on an Independent Expenditure (IE) committee). Schlackman said that Lee left after that.
- Exhibit 3- [REDACTED] Lee might have talked with Schlackman and told Schlackman that the IE was interested in him. MAP told Schlackman that Lee was running the Farrell campaign and if Schlackman was to work on the IE, Schlackman could not be in-contact with Lee.
- Exhibit 4- [REDACTED] Schlackman stated that the sentence where he told LeBlanc that only the two of them should know about MAP's involvement in CSV was in the email because of politics. He did not want everyone to know that MAP was helping CSV raise money. Schlackman did not want to give anything to his opponents that could be used against him and that was the reason for the statement. When asked if fundraising was MAP's role, Schlackman responded that it was and that he believed that was all she could do within the law.
- Exhibit 5- [REDACTED] It does not refer to a CSV mailer. CSV gave money to the D2 Democrats as an IE. LeBlanc was producing the mailer but it was not a CSV mailer. The D2 Democrats paid MSHC for the slate card.
- Exhibit 6- [REDACTED] Schlackman said that he was not keeping MAP apprised of the on goings of CSV but sent this email to her because she was going to do a robocall for CSV. He said that this email was for budgeting purposes and MAP was fundraising for CSV. Schlackman was asked if the information in the email would be items that would be discussed with Helfand. Schlackman said that was correct, Helfand knew the plan, he knew if there were changes, and he knew if there was pending money coming in to CSV. SCC West told Schlackman that when we talked with Helfand, Helfand made it seem that he did not make any decisions for CSV and that Schlackman and LeBlanc made all of the decisions for CSV. Schlackman stated that Helfand had to approve the expenditures and said that Helfand had veto power.
- Exhibit 7- [REDACTED] Winning Directions (WD) is a firm that does printing and other political functions. Schlackman thinks that the door hanger was for the field operation. CSV was paying people to go and hang the door hangers that the email references. Schlackman is fairly certain that CSV paid for the field operation which included the street walkers. Schlackman said the reason that WD did the work for the door hangers instead of MSHC was because WD was close to the street walkers and he figured that WD should handle it.

Tony Fazio was the owner of WD. Schlackman did not know what he meant when he wrote, "Both work—Michela you make the decision." He did not remember this particular email.

- Exhibit 8- [REDACTED] Schlackman does not remember how the Tom Coates contribution was facilitated. Schlackman knows Coates personally. Schlackman stated that the only thing he had to do with the Coates contribution was that he picked up the check from Coates. Schlackman believes that MAP made the calls to Coates and Dede Wilsey. SCC West asked that when he would receive large contributions would he give a revised plan to Helfand. Schlackman responded that at the time things were moving too quickly to keep Helfand constantly updated. Schlackman said that with the extra money, he might add to the quantity of a mailer, or he might enhance the internet presence. When asked if they received less money would they cut items from the budget, Schlackman stated, "I don't do this for free. He (referring to Hennigan) told me not to add, but I'll add that line."

- Exhibit 9- [REDACTED]
[REDACTED] This email was covered under Exhibit 7.

- Exhibit 10- [REDACTED] Schlackman stated that this email chain was all about fundraising. He said that it was to show MAP what was done with the money that had been raised. When asked about MAP forwarding the email chain to Coates, Schlackman responded that this was done to show Coates what was done with the money.

- Exhibit 11- [REDACTED]
[REDACTED] Ungerleider is someone that Schlackman met with the D2 Democrats. Margaux Kelly is someone that he met once before, a couple of years prior to the election cycle. After the election Schlackman became friendly with Kelly. When asked if he went to the dinner, Schlackman stated that, "Knowing if I did, I probably bought." He then said, "It's not unusual for me to celebrate."

Schlackman said that MAP gave him very little advice with regards to CSV. If she did give him advice it was to the effect that he should bring up a particular issue or not bring up a particular issue. He never sent her copies of the mailers before they went out. Schlackman said that he knew better than show her anything or send her anything before print. Towards the end of the election cycle, he was telling her what CSV had done with the money. Stefani, Ungerleider, and Kott were all part of the D2 Democrats and wanted Farrell to win. None of them were working on Farrell's campaign¹. Schlackman said that Stefani, Ungerleider, and Kott did not see the mailers until after they had been sent out. The mailers of CSV were done by Schlackman, LeBlanc and Helfand. Schlackman was asked about contact between Lee and Helfand and Schlackman responded, "The only thing I knew was that Jack knew who I was through Chris Lee." When Helfand and Schlackman first spoke, Helfand was not surprised to talk with Schlackman and knew who he was and that Schlackman was going to work on the campaign. Schlackman never saw the email attachment that Lee gave to Helfand which outlined the basics of an IE. Schlackman said that Helfand started the IE because he was a friend of Farrell's and wanted him to win. Schlackman stated that the standard procedure of MSHC is that somebody in a campaign has to sign off the expenditure before a mailer would go to print. Schlackman could not believe that as diligent as LeBlanc is, that she would not have had Helfand sign the approval every step of the way. Schlackman did not know if Helfand could override him because the situation never arose.

¹ Farrell stated in his interview that Ungerleider had stopped by and volunteered on his campaign. See Report # 18. Stefani stated that she worked on the Farrell campaign as a volunteer. See Report # 10.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 19
REPORT DATE: 12/12/12 PAGE 1 of 3 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers DATE SIGNED: 12/20/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: In-Person
Person(s) interviewed: Natalie LeBlanc (Represented by Joe Sandler)
Work address:
Work phone:
Home address:
Home phone:

VI NARRATIVE:

On 12/05/12 at 10:30, Senior Commission Counsel (SCC) Galena West and I interviewed Natalie LeBlanc, former Vice President of MSHC Partners (MSHC) and current California Director of the Pivot Group, at the Pivot Group office located at 2201 Broadway, Penthouse 1, Oakland, CA. LeBlanc was represented by Joe Sandler who was present on speaker telephone. The following is a summary of this interview with LeBlanc:

LeBlanc currently works for the Pivot Group as the California Director. In 2010, during the time of the November election, LeBlanc was Vice President of the MSHC and managed the California office. She reported to the senior partnership which consisted of Richard Schlackman, Hal Malchao, Trish Hoppy, and Dean Levitan. She worked on 10 to 15 committees during the 2010 election cycle throughout the nation.

The emails are attached to this report. I sent the emails to Sandler by facsimile so that he could follow along during the interview. The following are LeBlanc's comments on the emails:

- Exhibit 1- LeBlanc does not know Kelly. She does not know Chris Lee personally, but she does know his wife. She also knows Bill Barnes and Catherine Stefan. She confirmed that she also knows Michela Alioto-Pier (MAP) and Schlackman. LeBlanc has never met Farrell. She stated that

Schlackman was handling the campaign for the IE for Farrell but did not know if the email was before he became involved. MSHC did become involved with Common Sense Voters (CSV).

- Exhibit 2- [REDACTED] LeBlanc said that Helfand ended up being her contact person for CSV.
- Exhibit 3- [REDACTED] LeBlanc did not know how MSHC was chosen to be the consultant for CSV. She stated that "all of the sudden" MSHC was involved and that Schlackman asked if she would help manage CSV internally.
- Exhibit 4- [REDACTED] It was not a common statement for Schlackman to make. LeBlanc did not believe that she had any contact with MAP regarding CSV. LeBlanc handled the mail production and MAP was not involved with that. She was unaware if MAP helped with other aspects. She does not recall if she asked for clarification from Schlackman regarding this email. Schlackman, as a general consultant, was in-charge of the strategy of CSV. She then stated that, "*He and Jack worked together.*" (Referring to the strategy of CSV.)
- Exhibit 5- [REDACTED] 20:
[REDACTED] Kott was her contact on the D2 slate mailer. The reason that LeBlanc was in contact with Stefani and Barnes was to get a picture for the slate. LeBlanc said that she did not work with either of them on CSV.
- Exhibit 6- [REDACTED]
[REDACTED] LeBlanc agreed that it appeared that Schlackman was keeping MAP in the loop concerning CSV. SCC West then referred back to the sentence in the email in Exhibit 4 where Schlackman asks that LeBlanc not tell anyone of MAP's involvement in CSV. LeBlanc did not know why Schlackman continued to keep MAP informed about CSV.
- Exhibit 7- [REDACTED] LeBlanc does not know Moran. LeBlanc does not recall ever using Winning Directions (WD) because they are a rival mail firm. Sandler said that WD was and is a competing Democratic direct mail firm. She does not know if the doorhanger referenced in the email is for CSV. LeBlanc feels that it is "little bit" odd for Schlackman to be using a rival firm to make the doorhanger. Sometimes when senior staff would give her directions, she would not question it but just complete the task that was asked of her.
- Exhibit 8- [REDACTED] LeBlanc was given a budget to plan around and then MSHC built a marketing plan around that. Schlackman would sketch out a budget and a basic plan and LeBlanc and another colleague would use this as a guide. The only person she recalls dealing with at CSV was Helfand. She cannot recall if Schlackman told her to contact MAP. Helfand was the one who signed off on all of the mail pieces and other expenditures.
- Exhibit 9- [REDACTED]
[REDACTED] MSHC does create doorhangers as part of their printing business. LeBlanc does not know why WD was used, especially since Schlackman was involved.

- Exhibit 10- [REDACTED] LeBlanc has heard the name Tom Coates before, but has never had any contact with him. CSV helped pay for the District 2 slate mailer that went out. That slate was the one where she was in contact with Stefani and Barnes regarding the picture of MAP and Farrell. She sent the update of the expenditures to MAP because Schlackman asked her to send the information. She does not know what the \$5,000 to the Republicans was about. She does not remember sending any other updates to MAP, but she noted that she does not remember sending this one.
- Exhibit 11- [REDACTED] Ungerleider worked with Kott on the District 2 slate. LeBlanc was not invited to the dinner and she stated that she did not attend. She does not know why Kelly would be invited to the dinner. Schlackman is known to invite people from different committees for celebrations. It does not surprise LeBlanc that he hosted a party such as this.

LeBlanc sometimes had a hard time tracking Helfand down to sign off on expenditures and make final decisions. When asked what types of decisions that Helfand would make, LeBlanc replied, *"He definitely was the overseer of the money of um, so we didn't spend anything until he signed off on it. We didn't build or work on any strategy or any I mean I think in the documents that we sent was a plan we wrote for him and we don't move forward. Our plan is that we come up with the ideas, we write the plan, and then we send it to the client for approval. He approved the plan and then we went through the process of designing and approving the mail and then he signed off, gave feed back, and made sure the pieces were right on in terms of what we wanted to do and then signed off on them and we sent them out."* When SCC West told LeBlanc that Helfand had informed us that MSHC had made all of the decisions for CSV, LeBlanc laughed and stated it was surprising that he would say that because MSHC ultimately needed approval from Helfand before they could move forward. Helfand and Schlackman were in-charge of fundraising. MSHC's policy is that the client would have to sign an approval before any work could commence. Helfand had to physically sign the approval. LeBlanc's contact with Helfand was at those points where she would need his approval. She called these points "fail-safes."

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 18
REPORT DATE: 12/19/12 PAGE 1 of 5 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers DATE SIGNED: 12/20/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: In-Person
Person(s) interviewed: Mark Farrell (Represented by James Sutton)
Work address: [REDACTED]
Work phone: [REDACTED]
Home address: [REDACTED]
Home phone: [REDACTED]

VI NARRATIVE:

On 11/15/12 at 11:00, Senior Commission Counsel (SCC) Galena West and I interviewed Mark Farrell, San Francisco District 2 Supervisor, at the law offices of Mennemeier Glassman & Stroud located at 980 9th St., Suite 1750, Sacramento, CA 95815. James Sutton represents Farrell and was present during the interview. The following is a summary of this interview with Farrell:

The 2010 election run was Farrell's first venture into public office. He had never held any public office prior to 2010. He felt the need to run for office because he felt that he could make better decisions for the city to make it a good place to raise his children. He was frustrated by what was happening at City Hall. He has a finance background and thought that it could be useful in curbing the large deficits that were coming from the current Board of Supervisors. In August 2009 he decided to run and started raising money for his campaign. He knew that he wanted to be in politics but he did not really know what he was getting himself into. He hired a treasurer and campaign consultant at first. The political consultant he hired was Chris Lee. Farrell believed that it was important to get a consultant in the beginning because he needed advice and had no idea what he was doing. Lee had other clients during this election. Lee was a political consultant for Teresa Sparks and Tony Kelly.

Margaux Kelly (Kelly) was Farrell's campaign manager. Early in 2010 he started running a field campaign with precinct captains. They focused on door knocking and getting out in the community. It was a very family oriented campaign. Lee was in-charge and Farrell and Kelly completed tasks that Lee thought were best for the campaign. It was a big deal when it was determined that Supervisor Michela Alioto-Pier (MAP) could not run

again. He had a good opinion of MAP. Farrell would not have continued his Supervisor bid if it was determined that MAP could run for reelection. MAP was popular in the district and Farrell's campaign priority became to get MAP to endorse Farrell. Farrell ended up getting endorsed by both MAP and the San Francisco Chronicle. There was a lot of contact between Farrell and MAP while he was trying to get her to endorse him. Once she endorsed him, there was less contact. MAP showed up at three or four campaign events for Farrell. Farrell does not remember the specific vendors that his campaign used. This was Lee's department. Farrell recalls that they could only afford to do three or four mail pieces.

[REDACTED] The emails are attached to this report. The following are Farrell's remarks on the emails:

- Exhibit 1- [REDACTED] Ren Riley is a grammar school friend of Farrell. Through public filings, Farrell found out that Jack Helfand was the Principal Officer of Common Sense Voters (CSV). Farrell stated that Helfand was his former boss at a law firm that he used to work at and was a bit of a "slave driver." Helfand was on Farrell's finance committee in the early parts of the campaign. He found out later that Helfand was going to do an independent expenditure (IE) committee and that he was told to stay away from Helfand. He was not to interact with Helfand. Farrell knew that he was going to be reaching out to people for the IE. Farrell wanted to strictly abide by the rules. Lee told Farrell that he could point people in Helfand's direction, but that was it. I asked Farrell where did the idea of the IE come from, who thought of it and he replied, "*Chris had mentioned this idea um, but it was not, uh I think it was on a finance committee call.*" Farrell did not remember the specifics of it.
- Exhibit 2- [REDACTED] Farrell thinks that the Chris in the email refers to Chris Lee. Farrell did not specifically direct Lee to contact Helfand. He does not recall talking to Lee about this.
- Exhibit 3- [REDACTED] Farrell is not aware of how Lee became involved with talking to Helfand. Farrell had never seen this email. Farrell did not know that Lee sent Helfand this email or attachment. Helfand was on the finance committee early on and he and Lee would talk. Farrell says it was possible that Helfand and Lee formed their own relationship without his knowledge. Lee was not getting paid to give Helfand advice regarding IEs. Farrell is frustrated that Lee did this.
- Exhibit 4- [REDACTED] This meeting was about getting MAP to endorse Farrell and it took place at MAP's residence. Catherine Stefani and Bill Barnes were working for MAP at the time. He knows who Richard Schlackman is now, but did not know him then. It was a meeting about whether MAP could do more than just endorse Farrell. He does not remember the exact date of her endorsement, but he does remember sitting at her dining room table and speaking with her about the endorsement. "HP locations" refers to "House Party locations." A big part of MAP's involvement was getting her email lists and seeing if people who supported MAP could support Farrell. He does not know why Schlackman would have been invited. He met Stefani during the campaign and she works for Farrell now. Kelly also currently works for Farrell. Lee does not currently work for Farrell. Lee and Farrell talk sporadically. Sutton felt that MAP could have invited Schlackman because she had a long standing relationship with him and he always ran her campaigns.

- Exhibit 5- [REDACTED] Farrell did not know that Lee was sending this information to Helfand. Farrell knows the people on the list that Lee sent to Helfand. He was unsure if all of them were contributors to his campaign. Some of the people were people that were on the finance committee on Farrell's campaign, so they would know Lee. Farrell did not help come up with this list. Farrell does not know why Lee used the word "we" in the sentence telling Helfand that a consultant was on board. Farrell did not choose a consultant to run CSV. He did not discuss with Lee who should help on CSV. Farrell did not direct Lee or Helfand to speak with MAP about getting Schlackman to do the consulting work on CSV.
- Exhibit 6- [REDACTED] I asked if Lee had gone rouge and Farrell agreed he had. Farrell did not have any contact with Helfand regarding CSV.
- Exhibit 7- [REDACTED] MAP did not mention that she was going to get involved with CSV. MAP did not give Farrell any indication that she had worked on CSV.
- Exhibit 8- [REDACTED] Farrell did not give Lee any direction to funnel contributors to Helfand. Kelly did not bring this to Farrell's attention that she sent the contact information to Lee.
- Exhibit 9- [REDACTED] The list the email refers to is MAP's donor email list.
- Exhibit 10- [REDACTED] Farrell does not remember specifically what this email chain refers to, but he thinks that it has to do with the list and eblast referenced in exhibit 9.
- Exhibit 11- [REDACTED] Farrell imagines that his campaign was going to send an eblast to everyone on his campaign's email list and his campaign was going to add the email addresses of MAP's donors to the campaign's master list. SCC West asked if this list was sent to the finance committee of Farrell's campaign and he replied that he did not think that the finance committee was active at this point because it was not very effective. Farrell said that when they would receive a list like this, Lee would draft an email, Farrell would proof the copy of the email, and Kelly would be in-charge of getting the email out from the Farrell campaign's email account.
- Exhibit 12- [REDACTED] Farrell knows nothing about this email and reiterated that he had no contact with Helfand about this eblast. Farrell stated that the only way that he knew that Helfand was involved was when someone brought it to his attention that Helfand's name was on a document. Farrell lived in the district and remembers getting a piece sent from CSV. When he and his campaign workers were walking the precinct, he recalls running into walkers from CSV hanging doorhangers. Farrell did not take one of the door hangers with him, nor did he comment to anyone at CSV that he was not pleased with the design. SCC West asked Sutton if he wanted to comment for the record about the part of the eblast that said to send contributions to the Sutton Law Firm. Sutton stated that Helfand reached out to him early on, but did not hire the Firm. Sutton said that the Firm did not receive any CSV contributions.

- Exhibit 13- [REDACTED] Farrell does not remember Riley contacting him during this time and he is certain that if he did become in contact with Riley, they did not talk about CSV.
- Exhibit 14- [REDACTED] Farrell does not recall this specific meeting but he said the nature of the meeting would have been to get MAP to go to events with Farrell or to meet people in the district with him.
- Exhibit 15- [REDACTED] Suki Kott is from Farrell's neighborhood. Farrell was not aware that MAP's campaign staff was working on projects from CSV.
- Exhibit 16- [REDACTED] Farrell did not speak with MAP about the large donations that came to CSV. Farrell never spoke with Tom Coates. Coates did not contribute to the Farrell campaign. Coates hosted a house party for him. Farrell knows Dede Wilsey. Farrell met with her in her home and he spent about two hours talking about his campaign. She agreed to contribute \$500 to Farrell's campaign.
- Exhibit 17- [REDACTED] Sutton stated that Farrell met with Wilsey on 10/06/10 and she gave \$50,000 to CSV on 10/18/10.
- Exhibit 18- [REDACTED] Farrell did not know if MAP discussed the email or the plan referenced in the email with Lee. Farrell stated that Kelly and Lee went to the first meeting with MAP, but after that, he believes that they did not attend anymore meetings. Farrell and MAP did a campaign photo and he believes that Kelly was there also, but does not recall Lee being there. Farrell did not believe that Lee was in-contact with MAP very often.
- Exhibit 19- [REDACTED] Farrell did not know anything about this email. Farrell said that he probably reached out and contacted Coates after it was determined that MAP could not run and asked if he could host a house party.
- Exhibit 20- [REDACTED] Farrell knew of Winning Directions (WD) because earlier in the election cycle Lee informed him that WD would be doing the direct mail for the Farrell campaign. Farrell stated that WD stopped doing work for them because they were going to be doing IEs the rest of the election cycle. Scott Hart volunteered under Lee for Farrell's campaign. Farrell stated that he had no knowledge of Lee staying in touch with WD. [REDACTED] Farrell stated that it would not surprise him if Lee used WD for all of his races. Farrell had met Moran before in 2009 but did not know him well.
- Exhibit 21- [REDACTED] Farrell did not know anything about this email thread. He did not know that MAP was keeping Coates in the loop. SCC West asked Farrell about the state of his campaign at the time of this email and Farrell replied that he was satisfied where they were at this point in the cycle and that he was just focused on working in the neighborhood. Farrell stated that his campaign was not concerned about money at this point. Farrell stated that he had a website that they updated all the time, as well as a Facebook page. The campaign sent-out eblasts also. There was overlap with what CSV was putting out and with what the Farrell campaign was putting out. Farrell was not very pleased with having the CSV walkers placing doorhangers throughout the district. He felt that they were just getting in the way. The Farrell

- Exhibit 5- [REDACTED] Farrell did not know that Lee was sending this information to Helfand. Farrell knows the people on the list that Lee sent to Helfand. He was unsure if all of them were contributors to his campaign. Some of the people were people that were on the finance committee on Farrell's campaign, so they would know Lee. Farrell did not help come up with this list. Farrell does not know why Lee used the word "we" in the sentence telling Helfand that a consultant was on board. Farrell did not choose a consultant to run CSV. He did not discuss with Lee who should help on CSV. Farrell did not direct Lee or Helfand to speak with MAP about getting Schlackman to do the consulting work on CSV.
- Exhibit 6- [REDACTED] I asked if Lee had gone rouge and Farrell agreed he had. Farrell did not have any contact with Helfand regarding CSV.
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- Exhibit 11- [REDACTED] Farrell imagines that his campaign was going to send an eblast to everyone on his campaign's email list and his campaign was going to add the email addresses of MAP's donors to the campaign's master list. SCC West asked if this list was sent to the finance committee of Farrell's campaign and he replied that he did not think that the finance committee was active at this point because it was not very effective. Farrell said that when they would receive a list like this, Lee would draft an email, Farrell would proof the copy of the email, and Kelly would be in-charge of getting the email out from the Farrell campaign's email account.
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- Exhibit 16- [REDACTED] Farrell did not speak with MAP about the large donations that came to CSV. Farrell never spoke with Tom Coates. Coates did not contribute to the Farrell campaign. Coates hosted a house party for him. Farrell knows Dede Wilsey. Farrell met with her in her home and he spent about two hours talking about his campaign. She agreed to contribute \$500 to Farrell's campaign.
- Exhibit 17- [REDACTED] Sutton stated that Farrell met with Wilsey on 10/06/10 and she gave \$50,000 to CSV on 10/18/10.
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- Exhibit 19- [REDACTED] Farrell did not know anything about this email. Farrell said that he probably reached out and contacted Coates after it was determined that MAP could not run and asked if he could host a house party.
- Exhibit 20- [REDACTED] Farrell knew of Winning Directions (WD) because earlier in the election cycle Lee informed him that WD would be doing the direct mail for the Farrell campaign. Farrell stated that WD stopped doing work for them because they were going to be doing IEs the rest of the election cycle. Scott Hart volunteered under Lee for Farrell's campaign. Farrell stated that he had no knowledge of Lee staying in touch with WD. [REDACTED] Farrell stated that it would not surprise him if Lee used WD for all of his races. Farrell had met Moran before in 2009 but did not know him well.
- Exhibit 21- [REDACTED] Farrell did not know anything about this email thread. He did not know that MAP was keeping Coates in the loop. SCC West asked Farrell about the state of his campaign at the time of this email and Farrell replied that he was satisfied where they were at this point in the cycle and that he was just focused on working in the neighborhood. Farrell stated that his campaign was not concerned about money at this point. Farrell stated that he had a website that they updated all the time, as well as a Facebook page. The campaign sent-out eblasts also. There was overlap with what CSV was putting out and with what the Farrell campaign was putting out. Farrell was not very pleased with having the CSV walkers placing doorhangers throughout the district. He felt that they were just getting in the way. The Farrell

campaign did not do online advertisements while CSV did. Farrell knew that there was an internet advertising budget, but did not recall how it was allocated.

- Exhibit 22- [REDACTED]

[REDACTED]
Ungerleider is a woman in the neighborhood who volunteered on Farrell's campaign. Farrell did not know about this dinner and was not invited.

- Exhibit 23- [REDACTED] This email was discussed previously in the interview under Exhibit 20.

Farrell stated that many of the emails showed to him during the interview were new to him. Lee did not give Farrell the indication that he was communicating with CSV. Farrell said that he wanted his campaign to be about following the rules. Lee was hired as a general consultant, but Farrell does not remember if there was any kind of contract. Farrell stated he had agreed on a certain dollar amount per month that the campaign would pay Lee. He does not remember whether there was a document that would show Lee's job duties.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 12
REPORT DATE: 10/26/12 PAGE 1 of 3 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers

DATE SIGNED: 12/20/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes (Transcript Attached)
Manner of interview: In-Person
Person(s) interviewed: Margaux Kelly (Represented by James Sutton)
Work address: [REDACTED]
Work phone: [REDACTED]
Home address: [REDACTED]
Home phone: [REDACTED]

VI NARRATIVE:

On 10/04/12 at 14:30, Senior Commission Counsel (SCC) Galena West and I interviewed Margaux Kelly, former campaign manager for the Mark Farrell campaign and current Legislative Aide to Supervisor Mark Farrell, at the law offices of James Sutton located at the address above. Sutton represents Kelly and was present during the interview. The following is a summary of this interview with Kelly:

Kelly's current job includes constituent services, guiding the legislative process through the Board of Supervisors and helping to write newsletters. While Kelly was Farrell's campaign manager, she was his "day to day" person who ran a field program. She had door to door contact with voters that Farrell had met at community events and was in charge of Farrell's scheduling. When it was determined that Supervisor Michela Alioto-Pier (MAP) was unable to run again for Supervisor due to term limits, the Farrell campaign stayed in the race. MAP eventually endorsed Farrell for District Two Supervisor.

[REDACTED] The emails are attached to this report. The following are Kelly's remarks on the emails:

- Exhibit I- [REDACTED]
[REDACTED] Stefani was legislative aide for MAP. Bill Barnes was also a legislative aide for MAP. Schlackman refers to Rich Schlackman who is MAP's political consultant. Kelly recalls the meeting was after it was determined that MAP was unable to run again. She does not remember the

exact details of the meeting and cannot recall if Farrell was actually there, even though he is listed on the email. She says the meeting could have been about where to place signs and where to have house parties even though Kelly says that MAP and her staff never ended up helping her in this way. Kelly says that they were lazy.

- Exhibit 2- [REDACTED] Kelly says that MAP was going to send out a fundraising e-blast for Farrell. Kelly agreed that MAP was fundraising for Farrell.
- Exhibit 3- [REDACTED] Kelly did not know who wrote the text the email refers to.
- Exhibit 4- [REDACTED] Kelly agreed that this is the list that the email in Exhibit 3 refers to. She stated that they used the list to send out the e-blast to the donors.
- Exhibit 5- [REDACTED] Stefani was MAP's scheduler and the email refers to house parties and restaurant events that the Farrell campaign was attending and that which they wanted MAP to attend also.
- Exhibit 6- [REDACTED] The majority of the support that MAP provided the Farrell campaign was showing up to events and speaking favorably about Farrell. Kelly stated that they did not meet often.
- Exhibit 7- [REDACTED] Kelly does not know LeBlanc. Kott is a friend of Stefani and a resident of District 2. Kelly does not know what the email is referring to. She knows that the email is not referring to any type of fundraising for the Farrell campaign. Kelly stated that she never exchanged an email with LeBlanc.
- Exhibit 8- [REDACTED] Winning Directions (WD) did work for the Farrell campaign prior to August 2010. Kelly is adamant that WD did not print anything for the Farrell campaign after August 2010. At this point, Sutton produced an email and gave me a copy of the email which is the first document under tab 8 attached to this report. The email was from Scott Hart to Lee dated 08/19/10 stating that WD will be working on IEs and that it can no longer do any work for the Farrell campaign. (It was later determined by Sutton that this email was non responsive to the Farrell subpoena and was not provided to Enforcement originally. The email has the following writing in the bottom right corner of the email: "Non-responsive but Big FYI")
- Exhibit 9- [REDACTED] Tom Coates is a supporter of Farrell and hosted a party at his house for Farrell. Kelly does not believe that Coates ever made a contribution to Farrell's campaign. She did not have any contact with Schlackman and did not know why MAP was being apprised of expenditures of Common Sense Voters (CSV). To Kelly's knowledge, MAP's involvement was limited to attending events for Farrell, sending out endorsements, and giving the Farrell campaign her donor list. Kelly was not privy to any conversations that led her to believe that MAP was involved in CSV. Kelly knew that Helfand was a supporter of Farrell. She did not schedule Farrell to meet with him. Kelly stated that

MAP and Farrell did not meet frequently during the campaign season. Kelly did not schedule any meetings between Farrell and Schlackman.

- Exhibit 10- [REDACTED] Ungerleider was an acquaintance who became a friend of Kelly. The Farrell campaign did not create the website. Kelly said that she sent the email because, *"It was out there in the universe and I couldn't believe it existed."* Kelly agreed that she sent it to Stefani because they were friends. The website had the same graphic as a mailer that CSV put out and Kelly agreed that it was put out by the same people.
- Exhibit 11- [REDACTED] The "boss" refers to Farrell. Kelly ended up going to the dinner at Parma in the Marina. Stefani was there as well as Barnes, Schlackman, Ungerleider, and Kott. Kelly does not remember who paid for the dinner, but did not rule out that Schlackman could have paid for her. Ungerleider was the one who invited Kelly. At the time of the email, Stefani and Kelly had become friends and potentially new colleagues. She did not recall any conversations at the party concerning CSV.
- Exhibit 12- [REDACTED] Kelly did forward Lamond's contact information to Lee. She is unaware if Lee forwarded it to Helfand. This was the only instance that Kelly can recall where she forwarded something to Lee for Helfand. Kelly reiterated that she did not have any contact with the IE.

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: //

REPORT DATE: 11/19/12

PAGE 1 of 3 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers [REDACTED]

DATE SIGNED: 12/6/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: In-Person
Person(s) interviewed: Jack Helfand
Work address: [REDACTED]
Work phone: [REDACTED]
Home address: [REDACTED]
Home phone: [REDACTED]

VI NARRATIVE:

On 10/04/12 at 11:30, Senior Commission Counsel (SCC) Galena West and I interviewed Jack Helfand, Principal Officer of Common Sense Voters (CSV), at Vantage Point Capital located at the address above. A transcript is attached to this report. The following is a summary of this interview with Helfand:

Helfand's current job is General Counsel at Vantage Point Capital (VPC). He has been employed by VPC for a little over one year. He has never had anything to do with San Francisco politics before. Helfand was Farrell's supervisor at Wilson, Sonsini, Goodrich and Rosati. I asked Helfand how he became involved with CSV and Helfand replied, "I think that I was trying to encourage people to support Mark who were sort of outside San Francisco, you know, sort of people we had worked with and stuff like that." Some people that had donated to Farrell had discovered that there was a limit to how much they could contribute; so Helfand looked into seeing whether there was "anything that could be done."

SCC West asked Helfand if he was in-charge of strategy to which he replied, "I mean that is a huge overstatement." SCC West followed up with, "But deciding who spent the money that would be you, because they were your bookkeepers, right?" Helfand then stated, "Well, I...I don't know how exactly how the arrangement work, my understanding was that the Treasurer actually had authority with respect to the committee, but yeah I certainly was you know involved in it." Helfand was involved with the expenditures of CSV. When asked who would set up mailers or other expenditures, Helfand stated that it was the person that determined the strategy. Helfand was asked who that person was and he became slightly agitated and said that

he expected us to have more answers than him. He said we clearly know who the consultant was. SCC West responded that we know it was Richard Schlackman who was the political consultant of CSV. Helfand agreed that he was not dealing with the vendors. Schlackman would have been the person who would have picked out who printed mailers and what they would say.

[REDACTED] The emails are attached to this report. The following is Helfand's analysis of the emails:

- Exhibit 1- [REDACTED] Helfand does not remember who "Chris" is or what the email would have been about.
- Exhibit 2- [REDACTED] When informed that this email was sent by Chris Lee three hours later than the one in Exhibit 1, Helfand agreed that Chris Lee is the "Chris" from the first email. Helfand said that the information that Lee sent to him certainly was not requested by him at anytime. Helfand said, *"I don't recall asking anybody for help with this."* When informed that Lee had told us that Helfand had requested the information contained in the email attachment, Helfand said he still didn't remember but he must have since he received an email from Lee. Helfand may have said something to Farrell to the effect that he was "going to work on something separately from him."
- Exhibit 3- [REDACTED] Helfand did end up contacting Ren Riley. Riley was part of the 8-10 people that Helfand wanted to step up for Farrell. Helfand stated that Riley was at a company like Helfand's there in Palo Alto and that he knew Riley before CSV.
- Exhibit 4- [REDACTED]
[REDACTED] I pointed to the sentence in the email that said, [REDACTED]
[REDACTED] I told Helfand that that particular sentence made it seem as if Lee, or someone else, had picked the consultant for him. Helfand then stated, *"Hm, I don't take that from the email um, but..."* SCC West then asked him what he thought the sentence means, to which Helfand replied, *"I don't know, I never ever met with any of the consultants..."* Helfand insisted that Lee never told him who the consultant would be. Helfand was then asked how Rich Schlackman was hired as the consultant for CSV. Helfand said he did not know. Helfand was asked whether he did indeed call Lee as the email says. Helfand said he definitely spoke with Schlackman and, *"...may very well have followed up with Chris."* He does not remember details of the conversation. Helfand feels that it is possible that Lee said something to the effect that they could not have communications. Helfand thinks it is incredibly unlikely that Lee told him never to call him again.
- Exhibit 5- [REDACTED] Helfand's recollection of Schlackman becoming involved was not because Lee or anyone else said to hire Schlackman.
- Exhibit 6- [REDACTED] Helfand thinks that LeBlanc worked for Schlackman. Helfand was working with LeBlanc and Schlackman to determine activities of CSV. Helfand referred to himself as a political novice and that he deferred the name and the political message to people who had expertise. SCC West asked Helfand if he was paid for his position in CSV. Helfand replied, *"...to be entirely accurate about that, um, at the end shutting down the fund*

there was approximately \$2,600 left or something like that. I charged or approved an expense to cover legal costs..." The legal costs had to do with a settlement with the San Francisco Ethics Commission. He felt that the issue and settlement was "B.S." Helfand said, "...there was a little bit of legal time that I negotiated with San Francisco which I compensated myself for."

- Exhibit 7-

Money that was received by the Sutton Law Firm was then sent to the treasurer. He said that his committee was trying hard not to have any contact with the Farrell campaign. Even though the names of the recipients of the email are the same as the names on the list that Lee sent him on 09/12/10, Helfand did not agree that Lee brought up these names in specific. Helfand thinks that he knew all of the people that the email went out to before the election. Helfand reiterated that he was trying not to have any contact with the Farrell campaign at all. SCC West asked whether he felt that Lee was trying to influence CSV. Helfand responded that Lee had no effect on him. When asked whether he was contacted by Lee, Helfand stated that there was an exchange of emails.

- Exhibit 8-

Helfand said that it appeared that Riley said that he was going to contact Farrell and Helfand advised him against contacting Farrell.

- Exhibit 9-

Helfand stated that originally he put CSV together as an effort to raise a small amount of money to support Farrell. He then said that "two fairly well to do San Franciscans" ended up contributing. He said that CSV only received one six-figure check and that was from Tom Coates so that must be the check that Schlackman is referring to in the email.

- Exhibit 10-

This email references a conversation that Helfand had with Wilsey.

- Exhibit 11-

Helfand knows Artisan Capital but not necessarily David Lamond. Helfand does not know if Lamond gave CSV money. Helfand knew nothing about the email conversation between Lee and Kelly.

Helfand does not recall Supervisor Alioto-Pier working for CSV and he never met with her. The political consultants would have chosen who to do the printing and who to do the mailing. He would occasionally get a proof of a mailer before it went out. The consultants came up with the draft and would then send it to Helfand. Helfand had the final approval of the invoices. He did not deal with anyone else but Schlackman and LeBlanc. Schlackman never gave Helfand the impression that anyone was telling him how to run CSV.

Column	Description
Schedule A	Monetary Contributions Received
Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee Including (CAD - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Moller Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Rpt_Date	Date Document is Generated (As Written in CAL Submission)
From_Date	Period Start Date
Thru_Date	Period End Date
Elect_Date	Election Date
tblCover.Office_Cd	Office Sought (Codes in CAL Spec)
tblCover.Office_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 460
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_Cd	Contributor Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org,...)
Tran_NamL	Transaction Entity's Last Name or Business Name
Tran_NamF	Transaction Entity's First Name
Tran_NamT	Transaction Entity's Prefix or Title
Tran_NamS	Transaction Entity's Suffix
Tran_Adr1	Transaction Entity's Address Line 1
Tran_Adr2	Transaction Entity's Address Line 2
Tran_City	Transaction Entity's City
Tran_State	Transaction Entity's State
Tran_Zip4	Transaction Entity's Zip Code
Tran_Emp	Transaction Entity's Employer
Tran_Occ	Transaction Entity's Occupation
Tran_Self	Transaction Entity's self employed status (check box)
Tran_Type	Transaction Type (T=Third Party Repayment, F=Forgiven Loan, R=Returned (Neg. Amt?), I=Intermediary, X=Transfer)
Tran_Date	Transaction Date
Tran_Date1	Transaction Date (if a range)
Tran_Amt1	Transaction Amount
Tran_Amt2	Cumulative Year-To-Date
Tran_Descr	Transaction Description
Cmta_ID	Committee ID # (if [COM RCP] & no ID#, Treas Info Req.)
Tres_NamL	Treasurer Last Name (Req if [COM RCP] & no ID#)
Tres_NamF	Treasurer First Name (Req if [COM RCP] & no ID#)
Tres_NamT	Treasurer Title or Prefix
Tres_NamS	Treasurer Suffix
Tres_Adr1	Treasurer Address Line 1 (Req if [COM RCP] & no ID#)
Tres_Adr2	Treasurer Address Line 2
Tres_City	Treasurer City
Tres_State	Treasurer State
Tres_Zip	Treasurer Zip
Intr_NamL	Intermediary Last Name
Intr_NamF	Intermediary First Name
Intr_NamT	Intermediary Title or Prefix
Intr_NamS	Intermediary Suffix
Intr_Adr1	Intermediary Address Line 1

Column	Description
Intr_Adr2	Intermediary Address Line 2
Intr_City	Intermediary City
Intr_State	Intermediary State
Intr_Zip4	Intermediary Zip
Intr_Emp	Intermediary Employer
Intr_Occ	Intermediary Occupation
Intr_Self	Intermediary Self Employed? (check box value)
Cand_NamL	N/A
Cand_NamF	N/A
Cand_NamT	N/A
Cand_NamS	N/A
tblDetlTran.Office_Cd	N/A
tblDetlTran.Office_Descr	N/A
Juris_Cd	N/A
Juris_Descr	N/A
Dist_No	N/A
Off_S_H_Cd	N/A
Bal_Name	N/A
Bal_Num	N/A
Bal_Juris	N/A
Sup_Opp_Cd	N/A
Memo_Code	Memo Amount (Date/Amount are informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BackRef_TID	Back Reference to a Tran_ID of a "parent" record
XRef_SchNm	Related Items Is Included on Schedules 'B2' or 'F'
XRef_Match	Related item on another schedule has same transaction ID
Loan_Rate	Interest Rate on a Loan

Int_CmtId Committee ID for Transfer or Intermediary (required when Tran_type = X)

Schedule B1

Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - Slate Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Rpt_Date	Data Document is Generated (As Written in CAL Submission)
From_Date	Period Start Date
Thru_Date	Period End Date
Elect_Date	Election Date
tblCover.Office_Cd	Office Sought (Codes in CAL Spec)
tblCover.Office_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 450
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_Cd	Contributor Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org...)
Lndr_NamL	Lender Entity's Last Name or Business Name
Lndr_NamF	Lender Entity's First Name
Lndr_NamT	Lender Entity's Prefix or Title
Lndr_NamS	Lender Entity's Suffix
Loan_Adr1	Transaction Entity's Address Line 1

Field Name	Description
Loan_Adr2	Transaction Entity's Address Line 2
Loan_City	Transaction Entity's City
Loan_ST	Transaction Entity's State
Loan_Zip4	Transaction Entity's Zip Code
Loan_Date1	Date Loan Incurred (Original Date)
Loan_Date2	Date Due (Date Loan Due)
Loan_Amt1	Loan Amount (Amount Received this Period)
Loan_Amt2	Outstanding Balance
Loan_Amt3	Cumulative Cont. to Date (Calendar Year)
Loan_Amt4	Outstanding Balance Beginning this Period
Loan_Rate	Interest Rate Paid This Period
Loan_EMP	Transaction Entity's Employer
Loan_OCC	Transaction Entity's Occupation
Loan_Self	Transaction Entity Is self-employed? (Check Box) y/n
Comtee_ID	Committee ID # (If [COM RCP] & no ID#, Treas Info Req.)
Tres_NamL	Treasurer Last Name (Req If [COM RCP] & no ID#)
Tres_NamF	Treasurer First Name (Req If [COM RCP] & no ID#)
Tres_NamI	Treasurer Title or Prefix
Tres_NamS	Treasurer Suffix
Tres_Adr1	Treasurer Address Line 1 (Req If [COM RCP] & no ID#)
Tres_Adr2	Treasurer Address Line 2
Tres_City	Treasurer City
Tres_ST	Treasurer State
Tres_ZIP4	Treasurer Zip
B2Lender_Name-Inter_name	Intermediary Last Name
Intr_NamF	Intermediary First Name
Intr_NamI	Intermediary Title or Prefix
Intr_NamS	Intermediary Suffix
Intr_Adr1	Intermediary Address Line 1
Intr_Adr2	Intermediary Address Line 2
Intr_City	Intermediary City
Intr_ST	Intermediary State
Intr_ZIP4	Intermediary Zip
Memo_Code	Memo Amount (Date/Amount are informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BackRef_TID	Back Reference to a Tran_ID of a "parent" record
XRef_SchNm	Related item is Included on Schedules A or E
XRef_Match	X = related item on other schedule has same Tran_ID
Loan_Amt5	Amount Paid this Period (B1 only)
Loan_Amt6	Amount Forgiven this Period (B1 only)
Loan_Amt7	Amount of Interest Paid this Period (B1 only)
Loan_Amt8	Original Amount of Loan (B1 only)
Schedule B2	Loan Guarantors
Filer_ID	Filer ID (FPCC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - Slate Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Rpt_Date	Date Document is Generated (As Written in CAL Submission)
From_Date	Period Start Date
Thru_Date	Period End Date
Elect_Date	Election Date
tblCover.Office_Cd	Office Sought (Codes in CAL Spec)

Column	Description
tblCover_Offic_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 460
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_Cd	Contributor Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org,...)
Lndr_NamL	Gaurantor Entity's Last Name or Business Name
Lndr_NamF	Gaurantor Entity's First Name
Lndr_NamT	Gaurantor Entity's Prefix or Title
Lndr_NamS	Gaurantor Entity's Suffix
Loan_Adr1	Transaction Entity's Address Line 1
Loan_Adr2	Transaction Entity's Address Line 2
Loan_City	Transaction Entity's City
Loan_ST	Transaction Entity's State
Loan_Zip4	Transaction Entity's Zip Code
Loan_Date1	Date of Loan
Loan_Date2	N/A
Loan_Amt1	Amount Gauranteed this Period
Loan_Amt2	Balance Outstanding to Date
Loan_Amt3	Cumulative to Date (Calendar Year Amount)
Loan_Amt4	N/A
Loan_Rate	N/A
Loan_EMP	N/A
Loan_OCC	N/A
Loan_Self	N/A
Cmte_ID	Committee ID # (if [COM] RCP) & no ID#, Treas Info Req.)
Tres_NamL	Treasurer Last Name [Req if [COM] RCP] & no ID#)
Tres_NamF	Treasurer First Name [Req if [COM] RCP] & no ID#)
Tres_NamT	Treasurer Title or Prefix
Tres_NamS	Treasurer Suffix
Tres_Adr1	Treasurer Address Line 1 (Req if [COM] RCP) & no ID#)
Tres_Adr2	Treasurer Address Line 2
Tres_City	Treasurer City
Tres_ST	Treasurer State
Tres_Zip4	Treasurer Zip
B2Lender_Name-Inter_name	Intermediary Last Name
Intr_NamF	Intermediary First Name
Intr_NamT	Intermediary Title or Prefix
Intr_NamS	Intermediary Suffix
Intr_Adr1	Intermediary Address Line 1
Intr_Adr2	Intermediary Address Line 2
Intr_City	Intermediary City
Intr_ST	Intermediary State
Intr_Zip4	Intermediary Zip
Memo_Code	Memo Amount (Date/Amount are informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BackRef_ID	Back Reference to a Tran_ID of a "parent" record
XRef_SchNm	Related item is included on Schedules A or E
XRef_Match	X = related item on other schedule has same Tran_ID
Loan_Amt5	N/A
Loan_Amt6	N/A
Loan_Amt7	N/A
Loan_Amt8	N/A
Schedule C	Nonmonetary Contributions Received

Submission	Description
Filer_ID	Filer ID (FPPC or Local)
Filer_Name	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Rpt_Date	Date Document Is Generated (As Written in CAL Submission)
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tblCover.Office_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 460
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_CD	Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org.,...)
Tran_Name	Transaction Entity's Last Name or Business Name
Tran_NameF	Transaction Entity's First Name
Tran_NameT	Transaction Entity's Prefix or Title
Tran_NameS	Transaction Entity's Suffix
Tran_Adr1	Transaction Entity's Address Line 1
Tran_Adr2	Transaction Entity's Address Line 2
Tran_City	Transaction Entity's City
Tran_State	Transaction Entity's State
Tran_Zip4	Transaction Entity's Zip Code
Tran_Emp	Transaction Entity's Employer
Tran_Occ	Transaction Entity's Occupation
Tran_Self	Transaction Entity's self employed status (check box)
Tran_Type	Transaction Type (T=Third Party Repayment, F=Forgiven Loan, R=Returned (Neg. Amt?), I=Intermediary, X=Transfer)
Tran_Date	Transaction Date
Tran_Date1	Transaction Date (if a range)
Tran_Amt1	Transaction Amount/Fair Market Value
Tran_Amt2	Cumulative Year-To-Date
Tran_Descr	Transaction Description
Cmte_ID	Committee ID # (If [COM RCP] & no ID#, Treas Info Req.)
Tres_Name	Treasurer Last Name (Req If [COM RCP] & no ID#)
Tres_NameF	Treasurer First Name (Req If [COM RCP] & no ID#)
Tres_NameT	Treasurer Title or Prefix
Tres_NameS	Treasurer Suffix
Tres_Adr1	Treasurer Address Line 1 (Req If [COM RCP] & no ID#)
Tres_Adr2	Treasurer Address Line 2
Tres_City	Treasurer City
Tres_State	Treasurer State
Tres_Zip	Treasurer Zip
Intr_Name	Intermediary Last Name
Intr_NameF	Intermediary First Name
Intr_NameT	Intermediary Title or Prefix
Intr_NameS	Intermediary Suffix
Intr_Adr1	Intermediary Address Line 1
Intr_Adr2	Intermediary Address Line 2
Intr_City	Intermediary City

Field Name	Description
Intr_State	Intermediary State
Intr_Zip4	Intermediary Zip
Intr_Emp	Intermediary Employer
Intr_Occ	Intermediary Occupation
Intr_Self	Intermediary Self Employed? (check box value)
Cand_NamL	N/A
Cand_NamF	N/A
Cand_NamT	N/A
Cand_NamS	N/A
tblDetlTran.Office_Cd	N/A
tblDetlTran.Office_Dscr	N/A
Juris_Cd	N/A
Juris_Dscr	N/A
Dist_No	N/A
Off_S_H_Cd	N/A
Bal_Name	N/A
Bal_Num	N/A
Bal_Juris	N/A
Sup_Opp_Cd	N/A
Memo_Code	Memo Amount (Date/Amount are Informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BalRef_TID	Back Reference to a Tran_ID of a "parent" record
XRef_SchNm	Related Items is Included on Schedules 'B2' or 'F'
XRef_Match	Related item on another schedule has same transaction ID
Loan_Rate	Interest Rate on a Loan
Int_Cmteld	Committee ID for Transfer or Intermediary (required when Tran_Type = X)
Schedule D	
Filer_ID	Summary of Expenditures Supporting/Opposing Other Candidates, Measures and Committees
Filer_NamL	Filer ID (FPPC or Local)
Report_Num	Filer Name (Committee Name)
Committee_Type	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Rpt_Date	Type of Committee Including (CAD - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
From_Date	Date Document is Generated (As Written in CAL Submission)
Thru_Date	Period Start Date
Elect_Date	Period End Date
tblCover.Office_Cd	Election Date
tblCover.Office_Dscr	Office Sought (Codes in CAL Spec)
Rec_Type	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Form_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Tran_ID	Schedule from Form 460
Entity_Cd	Transaction ID # (not necessarily consistent between Original and Amendments)
Payee_NamL	Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org...)
Payee_NamF	Payee's Last name (candidate, committee, or measure affected by expenditure)
Payee_NamT	Payee's First name
Payee_NamS	Payee's Prefix or Title
Payee_Adr1	Payee's Suffix
Payee_Adr2	Address of Payee
	Optional 2nd line of Address

Column	Description
Payee_City	Payee City
Payee_State	Payee State
Payee_Zip4	Payee Zip
Expn_Date	Date of Expenditure (Note: Date not on E & G)
Amount	Amount of Payment
Cum_YTD	Cumulative / YTD Amt (Note: No cumulatives on E & G)
Expn_ChkNo	Check Number (optional)
Expn_Code	Expense Code
Expn_Descr	Purpose of Expense and/or Description / explanation
Agent_NamL	Agent or Individual Contractor's Last Name
Agent_NamF	Agent or Individual Contractor's First Name
Agent_NamT	Agent or Individual Contractor's Prefix or Title
Agent_NamS	Agent or Individual Contractor's Suffix
Cmts_ID	N/A
Tras_NamL	N/A
Tras_NamF	N/A
Tras_NamT	N/A
Tras_NamS	N/A
Tras_Adr1	N/A
Tras_Adr2	N/A
Tras_City	N/A
Tras_ST	N/A
Tras_ZIP4	N/A
Cand_NamL	Candidate's Last Name
Cand_NamF	Candidate's First Name
Cand_NamT	Candidate's Prefix or Title
Cand_NamS	Candidate's Suffix
Office_CD	Office Sought
Office_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Juris_CD	Office Jurisdiction Code
Juris_Descr	Office Jurisdiction Description (Required if Juris_CD=(CIT,CTY,LOC,OTH)
Dist_No	Office District Number (Required if Juris_CD=(SEN,ASM,BOE)
Off_S_H_CD	Office Sought/Held Code: H=Held; S=Sought
Bal_Name	Ballot Measure Name
Bal_Num	Ballot Measure Number or Letter
Bal_Juris	Ballot Measure Jurisdiction
Sup_Opp_CD	Support or Opposition of the Ballot Measure
Memo_Code	Memo Amount (Date/Amount are informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BackRef_TID	Back Reference to a Tran_ID of a "parent" record
G_From_E_F	Back reference from schedule G to E or F
XRef_SchNm	Related item is included on schedules C or HZ
XRef_Match	X = related item on other schedule has same Tran_ID
Schedule G	
Filer_ID	Filer ID (FPCC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - Slate Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure
Rpt_Date	Date Document Is Generated (As Written in CAL Submission)
From_Date	Period Start Date
Thru_Date	Period End Date

Column	Description
Elect_Date	Election Date
tblCover.Office_Cd	Office Sought (Codes in CAL Spec)
tblCover.Office_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value [Type of data, IE: Cover Page, Expenditure, etc.]
Form_Type	Schedule from Form 460
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_Cd	Payee Type of Entry (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org...)
Payee_NamL	Payee's Last name
Payee_NamF	Payee's First name
Payee_NamT	Payee's Prefix or Title
Payee_NamS	Payee's Suffix
Payee_Adr1	Address of Payee
Payee_Adr2	Optional 2nd line of Address
Payee_City	Payee City
Payee_State	Payee State
Payee_Zip4	Payee Zip
Expn_Date	N/A (optional date of expenditure)
Amount	Amount of Payment (made by agent/contractor to payee)
Cum_YTD	N/A
Expn_ChkNo	Check Number (optional)
Expn_Code	Expense Code
Expn_Descr	Purpose of Expense and/or Description / explanation
Agent_NamL	Agent or Individual Contractor's Last Name
Agent_NamF	Agent or Individual Contractor's First Name
Agent_NamT	Agent or Individual Contractor's Prefix or Title
Agent_NamS	Agent or Individual Contractor's Suffix
Cmte_ID	Committee ID # (If [COM RCP] & no ID#, Treas Info Req.)
Tres_NamL	Treasurer Last Name (Req If [COM RCP] & no ID#)
Tres_NamF	Treasurer First Name (Req If [COM RCP] & no ID#)
Tres_NamT	Treasurer Title or Prefix
Tres_NamS	Treasurer Suffix
Tres_Adr1	Treasurer Address Line 1 (Req if [COM RCP] & no ID#)
Tres_Adr2	Treasurer Address Line 2
Tres_City	Treasurer City
Tres_ST	Treasurer State
Tres_ZIP4	Treasurer Zip
Cand_NamL	N/A
Cand_NamF	N/A
Cand_NamT	N/A
Cand_NamS	N/A
Office_Cd	N/A
Office_Descr	N/A
Juris_Cd	N/A
Juris_Descr	N/A
Dist_No	N/A
Off_S_H_Cd	N/A
Bal_Name	N/A
Bal_Num	N/A
Bal_Juris	N/A
Sup_Opp_Cd	N/A
Memo_Code	Memo Amount (Date/Amount are Informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BackRef_TID	Back Reference to a Tran_ID of a "parent" record
G_From_F_F	Back reference from schedule G to E or F

Field Name	Description
XRef_SchNm	Related Item is Included on schedules C or H2
XRef_Match	X = related item on other schedule has same Tran_ID
Schedule E	
Filer_ID	Payments Made
Filer_NamL	Filer ID (FPPC or Local)
Report_Num	Filer Name (Committee Name)
Committee_Type	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Rpt_Date	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major
From_Date	Donor/Independent Expenditure
Thru_Date	Date Document is Generated (As Written in CAL Submission)
Elect_Date	Period Start Date
tblCover.Office_CD	Period End Date
tblCover.Office_Dscr	Election Date
Rec_Type	Office Sought (Codes In CAL Spec)
Form_Type	Office Sought Description (Required If Office_CD is "OTH" Code for Other)
Tran_ID	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Entity_Cd	Schedule from Form 460
Payee_NamL	Transaction ID # (not necessarily consistent between Original and Amendments)
Payee_NamF	Payee Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org,...)
Payee_NamT	Payee's Last Name
Payee_NamS	Payee's First Name
Payee_Adr1	Payee's Prefix or Title
Payee_Adr2	Payee's Suffix
Payee_City	Address of Payee
Payee_State	Optional 2nd line of Address
Payee_Zip4	Payee City
Expn_Date	Payee State
Amount	Payee Zip
Cum_YTD	N/A (optional date of expenditure)
Expn_ChkNo	Amount of Payment
Expn_Code	N/A
Expn_Dscr	Check Number (optional)
Agent_NamL	Expense Code - Values: (Note: CTB (when non-monetary) & IND need explanation & listing on Schedule D.)
Agent_NamF	Purpose of Expense and/or Description / explanation
Agent_NamT	Agent or Individual Contractor's Last Name
Agent_NamS	Agent or Individual Contractor's First Name
Cmte_ID	Agent or Individual Contractor's Prefix or Title
Tres_NamL	Agent or Individual Contractor's Suffix
Tres_NamF	Committee ID
Tres_NamT	Treasurer's Last Name (Req If [COM RCP] & no [ID#])
Tres_NamS	Treasurer's First Name (Req If [COM RCP] & no [ID#])
Tres_Adr1	Treasurer's Prefix or Title
Tres_Adr2	Treasurer's Suffix
Tres_City	Treasurer's Street Address 1 (Req If [COM RCP] & no [ID#])
Tres_ST	Treasurer's Street Address 2
Tres_ZIP4	Treasurer's City
Cand_NamL	Treasurer's State
Cand_NamF	Treasurer's Zip
	N/A
	N/A

Schedule	Description
Cand_NamT	N/A
Cand_NamS	N/A
Office_Cd	N/A
Office_Desc	N/A
Juris_Cd	N/A
Juris_Desc	N/A
Dist_No	N/A
Off_S_H_Cd	N/A
Bal_Name	N/A
Bal_Num	N/A
Bal_Juris	N/A
Sup_Opp_Cd	N/A
Memo_Code	Memo Amount (Date/Amount are Informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BakRef_TID	Back Reference to a Tran_ID of a "parent" record
G_From_E_F	Back reference from schedule G to E or F
XRef_SchNm	Related Item is Included on schedules C or HZ
XRef_Match	X = related Item on other schedule has same Tran_ID
Schedule F	Accrued Expenses (Unpaid Bills)
Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major
Rpt_Date	Donor/Independent Expenditure
From_Date	Date Document is Generated (As Written in CAL Submission)
Thru_Date	Period Start Date
Elect_Date	Period End Date
tbiCover.Office_Cd	Election Date
tbiCover.Office_Desc	Office Sought (Codes in CAL Spec)
	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 460
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_Cd	Vendor Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org...)
Payee_NamL	Payee's Last name
Payee_NamF	Payee's First name
Payee_NamT	Payee's Prefix or Title
Payee_NamS	Payee's Suffix
Payee_Adr1	Address of Payee
Payee_Adr2	Optional 2nd line of Address
Payee_City	Payee City
Payee_State	Payee State
Payee_Zip4	Payee Zip
Beg_Bal	Outstanding balance at beginning of this period
Amt_Incur	Amount Incurred this period
Amt_Paid	Amount paid this period
End_Bal	Outstanding balance at close of this period
Expn_Code	Expense Code - Values: (Note: CTB (when non-monetary) & IND need explanation & listing on Schedule D.)
Expn_Desc	Purpose of Expense and/or Description / explanation

Column	Description
Comtee_ID	Committee ID
Tres_NamL	Treasurer's Last Name (Req If (COM RCP) & no ID#)
Tres_NamF	Treasurer's First Name (Req If (COM RCP) & no ID#)
Tres_NamT	Treasurer's Prefix or Title
Tres_NamS	Treasurer's Suffix
Tres_Adr1	Treasurer's Street Address 1 (Req If (COM RCP) & no ID#)
Tres_Adr2	Treasurer's Street Address 2
Tres_City	Treasurer's City
Tres_ST	Treasurer's State
Tres_ZIP4	Treasurer's Zip
Memo_Code	Memo Amount (Date/Amount are Informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BakRef_TID	Back Reference to a Tran_ID of a "parent" record
XRef_SchNm	Related item is included on schedules C
XRef_Match	X = related item on other schedule has same Tran_ID
Schedule H	Loans Made to Others
Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - Slate Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Rpt_Date	Date Document is Generated (As Written in CAL Submission)
From_Date	Period Start Date
Thru_Date	Period End Date
Elect_Date	Election Date
tblCover.Office_CD	Office Sought (Codes in CAL Spec)
tblCover.Office_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 460
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_Cd	Transaction Entity Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Comtee, Org...)
Lndr_NamL	Transaction Entity's Last Name or Business Name
Lndr_NamF	Transaction Entity's First Name
Lndr_NamT	Transaction Entity's Prefix or Title
Lndr_NamS	Transaction Entity's Suffix
Loan_Adr1	Transaction Entity's Address Line 1
Loan_Adr2	Transaction Entity's Address Line 2
Loan_City	Transaction Entity's City
Loan_ST	Transaction Entity's State
Loan_Zip4	Transaction Entity's Zip Code
Loan_Date1	Date Loan Made (Original Date)
Loan_Date2	Date Loan Due
Loan_Amt1	Amount Loaned This Period
Loan_Amt2	Outstanding Balance at Close of this Period
Loan_Amt3	Cumulative Loans to Date (Calendar Year)
Loan_Amt4	Outstanding Balance Beginning this Period
Loan_Rate	Interest Received Rate
Loan_EMP	Employer (If Sched B1, or Sched H)
Loan_OCC	Occupation (If Sched B1, or Sched H)
Loan_Self	Check Box: Self Employed?(Sched B1 & H)

Column	Description
Cmte_ID	N/A
Tres_NamL	N/A
Tres_NamF	N/A
Tres_NamT	N/A
Tres_NamS	N/A
Tres_Adr1	N/A
Tres_Adr2	N/A
Tres_City	N/A
Tres_ST	N/A
Tres_ZIP4	N/A
B2Lender_Name-Inter_name	Intermediary Last Name
Intr_NamF	Intermediary First Name
Intr_NamT	Intermediary Title or Prefix
Intr_NamS	Intermediary Suffix
Intr_Adr1	Intermediary Address Line 1
Intr_Adr2	Intermediary Address Line 2
Intr_City	Intermediary City
Intr_ST	Intermediary State
Intr_ZIP4	Intermediary Zip
Memo_Code	Memo Amount (Date/Amount are informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BakRef_TID	Back Reference to a Tran_ID of a "parent" record
XRef_SchNm	Related Item is Included on Schedules A or E
XRef_Match	X = related item on other schedule has same Tran_ID
Loan_Amt5	Amount Paid this Period
Loan_Amt6	Amount Forgiven this Period
Loan_Amt7	Amount of Interest Received this Period
Loan_Amt8	Original Amount of Loan
Schedule I	Miscellaneous Increases to Cash
Filer_ID	Filer ID (FPIC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Rpt_Date	Date Document is Generated (As Written in CAL Submission)
From_Date	Period Start Date
Thru_Date	Period End Date
Elect_Date	Election Date
tblCover.Office_Cd	Office Sought (Codes in CAL Spec)
tblCover.Office_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 460
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_Cd	Transaction Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org...)
Tran_NamL	Transaction Entity's Last Name or Business Name
Tran_NamF	Transaction Entity's First Name
Tran_NamT	Transaction Entity's Prefix or Title
Tran_NamS	Transaction Entity's Suffix
Tran_Adr1	Transaction Entity's Address Line 1
Tran_Adr2	Transaction Entity's Address Line 2

Column	Description
Tran_City	Transaction Entity's City
Tran_State	Transaction Entity's State
Tran_Zip4	Transaction Entity's Zip Code
Tran_Emp	Transaction Entity's Employer
Tran_Occ	Transaction Entity's Occupation
Tran_Self	Transaction Entity's self employed status (check box)
Tran_Type	Transaction Type (T=Third Party Repayment, F=Forgiven Loan, R=Returned (Neg. Amt?), I=Intermediary, X=Transfer)
Tran_Date	Transaction Date
Tran_Data1	Transaction Date (if a range)
Tran_Amt1	Transaction Amount
Tran_Amt2	Cumulative Year-To-Date
Tran_Descr	Transaction Description
Comt_ID	Committee ID # (if [COM RCP] & no ID#, Treas Info Req.)
Tres_NamL	Treasurer Last Name (Req if [COM RCP] & no ID#)
Tres_NamF	Treasurer First Name (Req if [COM RCP] & no ID#)
Tres_NamT	Treasurer Title or Prefix
Tres_NamS	Treasurer Suffix
Tres_Adr1	Treasurer Address Line 1 (Req if [COM RCP] & no ID#)
Tres_Adr2	Treasurer Address Line 2
Tres_City	Treasurer City
Tres_State	Treasurer State
Tres_Zip	Treasurer Zip
Intr_NamL	Intermediary Last Name
Intr_NamF	Intermediary First Name
Intr_NamT	Intermediary Title or Prefix
Intr_NamS	Intermediary Suffix
Intr_Adr1	Intermediary Address Line 1
Intr_Adr2	Intermediary Address Line 2
Intr_City	Intermediary City
Intr_State	Intermediary State
Intr_Zip4	Intermediary Zip
Intr_Emp	Intermediary Employer
Intr_Occ	Intermediary Occupation
Intr_Self	Intermediary Self Employed? (check box value)
Cand_NamL	N/A
Cand_NamF	N/A
Cand_NamT	N/A
Cand_NamS	N/A
tblDetTran.Office_Cd	N/A
tblDetTran.Office_Descr	N/A
Juris_Cd	N/A
Juris_Descr	N/A
Dist_No	N/A
Off_S_H_Cd	N/A
Bal_Name	N/A
Bal_Num	N/A
Bal_Juris	N/A
Sup_Opp_Cd	N/A
Memo_Code	Memo Amount (Date/Amount are informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BackRef_TID	Back Reference to a Tran_ID of a "parent" record
XRef_SchNm	Related items is included on Schedules 'B2' or 'F'
XRef_Match	Related item on another schedule has same transaction ID
Loan_Rate	Interest Rate on a Loan
Int_Cmtld	Committee ID for Transfer or Intermediary (required when Tran_type = X)

Column	Description
Summary	Totals from the 460 Summary Page and subtotals from each schedule
Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
	Type of Committee including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Committee_Type	Date Document Is Generated (As Written In CAL Submission)
Rpt_Date	Period Start Date
From_Date	Period End Date
Thru_Date	Election Date
Elect_Date	Office Sought (Codes In CAL Spec)
tblCover.Office_Cd	Office Sought Description (Required If Office_CD Is "OTH" Code for Other)
tblCover.Office_Desc	
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	If a letter then it is a schedule from Form 460; Otherwise Indicates FPPC Form number
Line_Item	Summary page line item (If Form Type = FPPC Form # such as 460 then lines from the Summary Page, if Form Type = letters then subtotal lines from each schedule page)
Amount_A	If Form_Type=460 then Total this period (From Attached Schedules), if schedule letter value = line item from subtotal on 460 form schedule. If Form Type=other FPPC form, refer to the applicable summary page
Amount_B	If Form_Type=460 then Calendar Year Total to Date, if schedule letter value = line item from subtotal on 460 form schedule. If Form Type=other FPPC form, refer to the applicable summary page
Amount_C	If Form_Type=460 then Election Total to Date (No longer in use), if schedule letter value = line item from subtotal on 460 form schedule. If Form Type=other FPPC form, refer to the applicable summary page
497	Contribution Report
Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
	Type of Committee including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Committee_Type	Date Document Is Generated (As Written In CAL Submission)
Rpt_Date	Period Start Date
From_Date	Period End Date
Thru_Date	
Rec_Type	Record Type Value: S497
Form_Type	Schedule Name/ID (Value: F497P1 = Late Contribution Received, F497P2 = Late Contribution Made)
Tran_ID	Transaction ID - permanent value unique to this item
Entity_Cd	Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org...)
Entity_NamL	Contributor/Recipient's Last name
Entity_NamF	Contributor/Recipient's First name
Entity_NamT	Contributor/Recipient's Prefix or Title

Form	Description
Enty_Nam5	Contributor/Recipient's Suffix
Enty_Adr1	Address of Contributor/Recipient
Enty_Adr2	Address of Contributor/Recipient Optional Line 2
Enty_City	City
Enty_ST	State Code
Enty_Zip4	Zip Code
Ctrib_Emp	Employer
Ctrib_Occ	Occupation
Ctrib_Self	Check Box: Self Employed?
Elec_Date	Date of Election (Required If Late Contribution Made)
Ctrib_Date	Date Item Received/Made (Begin date of date range for Items received)
Date_Thru	End-date of date range for Items received
Amount	Amount Received/Made
Comte_ID	Committee ID (Required If Entity_CD=CAO RCP)(Absolutely Required on F497P2 when Entity_CD=CAO RCP)
Cand_NamL	Candidate's Last Name
Cand_NamF	Candidate's First Name
Cand_NamT	Candidate's Prefix or Title
Cand_NamS	Candidate's Suffix
Office_Cd	Office Sought (Codes in CAL Spec)
Office_Descr	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Juris_Cd	Office Jurisdiction Code
Juris_Descr	Office Jurisdiction Description (Required If Juris_CD=(CIT,CTY,LOC,OTH)
Dist_No	Office District Number (Required if Juris_CD=(SEN,ASM,BOE)
Off_S_H_Cd	Office Sought/Held Code: H=Held; S=Sought
Bal_Name	Ballot Measure Name
Bal_Num	Ballot Number or Letter
Bal_Juris	Jurisdiction
Memo_Code	Memo Amount (Date/Amount are Informational only)
Memo_RefNo	Reference to text contained in a TEXT record
Rpt_ID_Num	Identifying Report Number on a Late Ctrib/Payment Rpt or an Ind Exp Report (Req. on F496, F497). (This user assigned value is printed in the Report No. and Amended Report No. fields on 496 & 497.)
496	Independent Expenditure Report
Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Rpt_Date	Date Document Is Generated (As Written in CAL Submission)
From_Date	Period Start Date
Thru_Date	Period End Date
Rec_Type	Record Type Value: S496
Form_Type	Schedule Name/ID Value: F496 = Independent Expenditures Made
Tran_ID	Transaction ID - permanent value unique to this item
Amount	Expenditure Amount
Exp_Date	Expenditure Date (Begin date of date range for items paid)
Date_Thru	End-date of date range for Items paid
Expn_Descr	Purpose of Expenditure and/or Description

Field	Description
Memo_Cd	Memo Amount (Date/Amount are Informational only)
Memo_RefNo	Reference to text contained in a TEXT record
Bal_Measure	Ballot Measure Name, Supported or Opposed
Bal_Num	Ballot Measure Number or Letter
Bal_Juris	Ballot Measure Jurisdiction
Sup_Opp_Cd	Support or Opposition of the Ballot Measure or Candidate (Shared Field)
Cand_NamL	Candidate Last Name, Supported or Opposed
Cand_NamF	Candidate First Name
Cand_NamT	Candidate Title or Prefix
Cand_NamS	Candidate Suffix
Office_Cd	Office Sought (Codes in CAL Spec)
Office_Desc	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Juris_Cd	Office Jurisdiction Code
Juris_Desc	Office Jurisdiction Description (Required if Juris_CD=CT,CTY,LOC,OTH)
Dist_No	Office District Number (Required if Juris_CD=SEN,ASM,BOE)
Rpt_ID_Num	Identifying Report Number on a Late Cntrb/Payment Rpt or an Ind Exp Report (Req. on F496, F497). (This user assigned value is printed in the Report No. and Amended Report No. Fields on 496 & 497.) Late contributions of \$100 or more received since the closing date of the last campaign statement (Form 450 or 460) through the date of the independent expenditure.
F496P3-Contributions	
Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
Committee_Type	Type of Committee including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure)
Rpt_Date	Date Document Is Generated (As Written in CAL Submission)
From_Date	Period Start Date
Thru_Date	Period End Date
tblCoverOffice_Cd	Office Sought (Codes in CAL Spec)
tblCoverOffice_Desc	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, i.e.: Cover Page, Expenditure, etc.)
Form_Type	Section on Form 496
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_Cd	Contributor Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org.,...)
Tran_NamL	Transaction Entity's Last Name or Business Name
Tran_NamF	Transaction Entity's First Name
Tran_NamT	Transaction Entity's Prefix or Title
Tran_NamS	Transaction Entity's Suffix
Tran_Adrl	Transaction Entity's Address Line 1
Tran_Adrl2	Transaction Entity's Address Line 2
Tran_City	Transaction Entity's City
Tran_State	Transaction Entity's State
Tran_Zip4	Transaction Entity's Zip Code
Tran_Emp	Transaction Entity's Employer
Tran_Occ	Transaction Entity's Occupation
Tran_Self	Transaction Entity's self employed status (check box)

Component	Description
Tran_Type	Transaction Type (T=Third Party Repayment, F=Forgiven Loan, R=Returned (Neg. Amt?), I=Intermediary, X=Transfer)
Tran_Date	Transaction Date
Tran_Date1	Transaction Date (if a range)
Tran_Amt1	Transaction Amount
Tran_Amt2	Cumulative Year-To-Date
Tran_Descr	Transaction Description
Cmte_ID	Committee ID # (If [COM RCP] & no ID#, Treas Info Req.)
Tres_NamL	Treasurer Last Name (Req If [COM RCP] & no ID#)
Tres_NamF	Treasurer First Name (Req If [COM RCP] & no ID#)
Tres_NamT	Treasurer Title or Prefix
Tres_NamS	Treasurer Suffix
Tres_Adr1	Treasurer Address Line 1 (Req If [COM RCP] & no ID#)
Tres_Adr2	Treasurer Address Line 2
Tres_City	Treasurer City
Tres_State	Treasurer State
Tres_Zip	Treasurer Zip
Intr_NamL	Intermediary Last Name
Intr_NamF	Intermediary First Name
Intr_NamT	Intermediary Title or Prefix
Intr_NamS	Intermediary Suffix
Intr_Adr1	Intermediary Address Line 1
Intr_Adr2	Intermediary Address Line 2
Intr_City	Intermediary City
Intr_State	Intermediary State
Intr_Zip4	Intermediary Zip
Intr_Emp	Intermediary Employer
Intr_Occ	Intermediary Occupation
Intr_Self	Intermediary Self Employed? (check box value)
Cand_NamL	N/A
Cand_NamF	N/A
Cand_NamT	N/A
Cand_NamS	N/A
tblDetlTran.Office_Cd	N/A
tblDetlTran.Office_Descr	N/A
Juris_Cd	N/A
Juris_Descr	N/A
Dist_No	N/A
Off_S_H_Cd	N/A
Bal_Name	N/A
Bal_Num	N/A
Bal_Juris	N/A
Sup_Opp_Cd	N/A
Memo_Code	Memo Amount (Date/Amount are Informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BakRef_TID	Back Reference to a Tran_ID of a "parent" record
XRef_SchNm	N/A
XRef_Match	N/A
Loan_Rate	Interest Rate on a Loan
Int_Cmtld	Committee ID for Transfer or Intermediary (required when Tran_type = X)
F465P3-Expenditure	Independent Expenditures Made
Filer_ID	Filer ID (FPPC or Local)
Filer_NamL	Filer Name (Committee Name)
Report_Num	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)

Column	Description
Committee_Type	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - State Mailer Organization, BMC - Ballot Measure Committee, MDI - Major
Rpt_Date	Donor/Independent Expenditure
From_Date	Date Document Is Generated (As Written In CAL Submission)
Thru_Date	Period Start Date
Elect_Date	Period End Date
tbiCover_Office_Cd	Election Date
tbiCover_Office_Descr	Office Sought (Codes In CAL Spec)
	Office Sought Description (Required If Office_CD is "OTH" Code for Other)
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 460
Trans_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_CD	Type of Entity (Individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org,...)
Payee_NamL	Payee's Last name (candidate, committee, or measure affected by expenditure)
Payee_NamF	Payee's First name
Payee_NamT	Payee's Prefix or Title
Payee_NamS	Payee's Suffix
Payee_Adr1	Address of Payee
Payee_Adr2	Optional 2nd line of Address
Payee_City	Payee City
Payee_State	Payee State
Payee_Zip4	Payee Zip
Expn_Date	Date of Expenditure
Amount	Amount of Payment
Cum_YTD	Cumulative / YTD Amt
Expn_ChkNo	Check Number (optional)
Expn_Code	Expense Code
Expn_Descr	Purpose of Expense and/or Description / explanation
Agent_NamL	Agent or Individual Contractor's Last Name
Agent_NamF	Agent or Individual Contractor's First Name
Agent_NamT	Agent or Individual Contractor's Prefix or Title
Agent_NamS	Agent or Individual Contractor's Suffix
Cmte_ID	N/A
Tres_NamL	N/A
Tres_NamF	N/A
Tres_NamT	N/A
Tres_NamS	N/A
Tres_Adr1	N/A
Tres_Adr2	N/A
Tres_City	N/A
Tres_ST	N/A
Tres_ZIP4	N/A
Cand_NamL	Candidate's Last Name
Cand_NamF	Candidate's First Name
Cand_NamT	Candidate's Prefix or Title
Cand_NamS	Candidate's Suffix
Office_CD	Office Sought
	Office Sought Description (Required If Office_CD is "OTH" Code for Other)
Office_Descr	Office Sought Description (Required If Office_CD is "OTH" Code for Other)
Juris_CD	Office Jurisdiction Code
Juris_Descr	Office Jurisdiction Description (Required If Juris_CD is CIT,CITY,LOC,OTH)

Component	Description
Dist_No	Office District Number (Required If Juris_CD=(SEN,ASM,BOE))
Off_S_H_CD	Office Sought/Held Code: H=Held; S=Sought
Bal_Name	Ballot Measure Name
Bal_Num	Ballot Measure Number or Letter
Bal_Juris	Ballot Measure Jurisdiction
Sup_Opp_CD	Support or Opposition of the Ballot Measure
Memo_Code	Memo Amount (Date/Amount are Informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BakRef_TID	Back Reference to a Tran_ID of a "parent" record
G_From_E_F	Back reference from schedule G to E or F
XRef_SchNm	Related Item is Included on schedules C or H2
XRef_Match	X = related item on other schedule has same Tran_ID
461P5-Expenditure	
Filer_ID	Contributions (Including Loans, Forgiveness of Loans, and Loan Guarantees) and Expenditures Made
Filer_NamL	Filer ID (FPCC or Local)
Report_Num	Filer Name (Committee Name)
	Report Number (Amendment Sequence Order, 000 Original Report, 001-999 Amendment Report #)
	Type of Committee Including (CAO - Candidate/Officeholder, CTL - Controlled Committee, RCP - Recipient Committee, SMO - Slate Maller Organization, BMC - Ballot Measure Committee, MDI - Major Donor/Independent Expenditure
Committee_Type	Date Document is Generated (As Written In CAL Submission)
Rpt_Date	Period Start Date
From_Date	Period End Date
Thru_Date	Election Date
Elect_Date	Office Sought (Codes in CAL Spec)
tblCover_Office_Cd	Office Sought Description (Required If Office_CD is "OTH" Code for Other)
tblCover_Office_Desc	
Rec_Type	Record Type Value (Type of data, IE: Cover Page, Expenditure, etc.)
Form_Type	Schedule from Form 460
Tran_ID	Transaction ID # (not necessarily consistent between Original and Amendments)
Entity_CD	Type of Entity (individual, Political Party, Small Contributor Committee, Other - e.g. a Bus, Cmte, Org...)
Payee_NamL	Payee's Last name (candidate, committee, or measure affected by expenditure)
Payee_NamF	Payee's First name
Payee_NamT	Payee's Prefix or Title
Payee_NamS	Payee's Suffix
Payee_Adr1	Address of Payee
Payee_Adr2	Optional 2nd line of Address
Payee_City	Payee City
Payee_State	Payee State
Payee_Zip4	Payee Zip
Exprn_Date	Date of Expenditure
Amount	Amount of Payment
Cum_YTD	Cumulative / YTD Amt
Exprn_ChkNo	Check Number (optional)
Exprn_Code	Expense Code
Exprn_Descr	Purpose of Expense and/or Description / explanation
Agent_NamL	Agent or Individual Contractor's Last Name
Agent_NamF	Agent or Individual Contractor's First Name
Agent_NamT	Agent or Individual Contractor's Prefix or Title
Agent_NamS	Agent or Individual Contractor's Suffix
Cmte_ID	N/A
Tres_NamL	N/A

Column	Description
Tres_NamF	N/A
Tres_NamT	N/A
Tres_NamS	N/A
Tres_Adr1	N/A
Tres_Adr2	N/A
Tres_City	N/A
Tres_ST	N/A
Tres_ZIP4	N/A
Cand_NamL	Candidate's Last Name
Cand_NamF	Candidate's First Name
Cand_NamT	Candidate's Prefix or Title
Cand_NamS	Candidate's Suffix
Office_Cd	Office Sought
Office_Desc	Office Sought Description (Required if Office_CD is "OTH" Code for Other)
Juris_Cd	Office Jurisdiction Code
Juris_Desc	Office Jurisdiction Description (Required if Juris_CD=(CT,CITY,LOC,OTH)
Dist_No	Office District Number (Required if Juris_CD=(SEN,ASM,BOE)
Off_S_H_Cd	Office Sought/Held Code: H=Held; S=Sought
Bal_Name	Ballot Measure Name
Bal_Num	Ballot Measure Number or Letter
Bal_Juris	Ballot Measure Jurisdiction
Sup_Opp_Cd	Support or Opposition of the Ballot Measure
Memo_Code	Memo Amount (Date/Amount are informational only)
Memo_RefNo	Reference to text contained in a TEXT record
BackRef_TID	Back Reference to a Tran_ID of a "parent" record
G_From_E_F	Back reference from schedule G to E or F
XRef_SchNm	Related item is included on schedules C or H2
XRef_Match	X = related item on other schedule has same Tran_ID
EmpBus_CB	Employer/Business info Included check-box
Bus_Name	Name of Employer/Business
Bus_Adr1	Employer/Business Street 1
Bus_Adr2	Employer/Business Street 2
Bus_City	Employer/Business City
Bus_ST	Employer/Business State
Bus_ZIP4	Employer/Business ZIP+4
Bus_Inter	Employer/Business Interests
BusAct_CB	Business Activity info Included check-box
BusActivity	Business Activity description
Assoc_CB	Association Interests info Included check-box
Assoc_Int	Association Interests description
Other_CB	Other Entity Interests info Included check-box
Other_Int	Other Entity Interests description

- INTERVIEW -

1
2 Mr. Myers: Lee Myers, FPPC.
3 Ms. Kelly: Margaux Kelly.
4 Mr. Sutton: Jim Sutton, representing Margaux Kelly.
5 Ms. West: Galena West, FPPC.
6 Mr. Myers: And really all we want to talk to you about is, I mean, we
7 subpoenaed some emails from you, and we just want some
8 clarification on who the people involved were, and if you could walk
9 us through a few of them --
10 Ms. Kelly: Okay.
11 Mr. Myers: -- and get a little back story. So, you worked for Mark Farrell's
12 campaign, correct?
13 Ms. Kelly: Right.
14 Mr. Myers: And at what capacity?
15 Ms. Kelly: I was his day to day person, the campaign manager.
16 Mr. Myers: Okay, and what did that really entail?
17 Ms. Kelly: I ran a field program --
18 Mr. Myers: Okay.
19 Ms. Kelly: -- that was door-to-door contact with voters that we met at
20 community events and we had house parties where we met voters
21 and that kind of thing. I did all of the Supervisor's scheduling. He
22 was a candidate at the time.
23 Mr. Myers: Yeah.
24 Ms. Kelly: So, I did his scheduling and yeah, that's the most of it.
25 Ms. West: That's a lot.
26 Mr. Myers: Uh-huh. That's a lot.
27 Ms. Kelly: Yeah, it kept me busy.
28 Mr. Myers: And so you work for Supervisor Farrell right now, correct?

1 Ms. Kelly: Right.

2 Mr. Myers: And what's your capacity there currently?

3 Ms. Kelly: Most of the legislative aid functions include constituent services,
4 legislative process through the Board, help to write newsletters, that
5 kind of thing.

6 Mr. Myers: Okay and in 2010, Supervisor Aliota-Pier she was determined that
7 she was not going to be able to run again, correct?

8 Ms. Kelly: That happened, yeah, in the year 2010, yeah.

9 Mr. Myers: And so as Mark Farrell's campaign manager, how did that change
10 things for you guys once it was determined that she was not able to
11 run?

12 Ms. Kelly: That we would stay in the race.

13 Mr. Myers: Oh, okay. So, you were in danger of getting out of the race with her
14 still in it. Is that what you're meaning?

15 Ms. Kelly: If she ran, we wouldn't have run.

16 Mr. Myers: Okay.

17 Ms. Kelly: She was an incumbent at the time.

18 Mr. Myers: Okay and so after that, did she endorse a particular candidate,
19 Supervisor Aliota-Pier?

20 Ms. Kelly: Yeah. She endorsed Mark Farrell, yeah.

21 Mr. Myers: For District Two Supervisor?

22 Ms. Kelly: Uh-huh.

23 Mr. Myers: Okay. We brought some emails; mostly they look familiar to you. If
24 you flip to the first half which is Exhibit 1, [REDACTED]
25 [REDACTED]
26 [REDACTED] Liz Briggs is Mark's wife, right?

27 Ms. Kelly: Right.

28 Mr. Myers: Okay.

1 Ms. Kelly: Yeah.

2 Mr. Sutton: They just had their third baby about how long ago?

3 Ms. Kelly: Six days ago.

4 Ms. West: Wow.

5 Mr. Myers: Everything turn out well, I mean, did things go well?

6 Ms. Kelly: Oh, yeah. Yeah, yeah, yeah.

7 Mr. Myers: Good, good to hear.

8 Ms. Kelly: Big kid.

9 Mr. Myers: And so, who is Chris Lee?

10 Ms. Kelly: Chris was Mark's campaign consultant.

11 Mr. Myers: And Catherine Stefani? Is it Stefani or Stephanie (phonetic)?

12 Ms. Kelly: Stefani.

13 Mr. Myers: Stefani, okay.

14 Ms. Kelly: Yeah, Who was she?

15 Mr. Myers: Yes.

16 Ms. Kelly: She was Supervisor Allota-Pier's legislative aid.

17 Mr. Myers: And Bill Barnes?

18 Ms. Kelly: Supervisor Allota-Pier's legislative aid.

19 Mr. Myers: Okay, so they're both her legislative aids?

20 Ms. Kelly: Yeah.

21 Mr. Myers: And then it says not attending Schlackman. Who's Schlackman?

22 Ms. Kelly: He is Supervisor Allota-Pier's campaign consultant.

23 Mr. Myers: Do you recall the nature of that meeting? I know it's two years ago.

24 Ms. Kelly: If it was after she declared that she was not able to run -

25 Mr. Myers: Uh-huh.

26 Ms. Kelly: - then it was probably about her endorsing the Supervisor.

27 Mr. Myers: Okay. Was Mark Farrell at that meeting also? Do you recall?

28 Ms. Kelly: I don't remember that he was there specifically -

1 Mr. Myers: Uh-huh.

2 Ms. Kelly: -- I mean, he's listed here, but I don't specifically remember him
3 being there. I don't actually remember the details of the meeting --

4 Mr. Myers: Uh-huh.

5 Ms. Kelly: -- so I can't say for sure if he was there.

6 Ms. West: Does the bottom part help refresh your memory? [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Ms. Kelly: I'm sure this is when a candidate or when an elected official
10 endorses another candidate. They can help with, you know,
11 different aspects of our campaign like, you know, good places to
12 put up signs, that kind of thing.

13 Ms. West: Do you what HP locations stands for?

14 Mr. Kelly: House party.

15 Ms. Sutton: Okay.

16 Mr. Myers: Oh, okay.

17 Ms. West: You're like hand (overlapping).

18 Mr. Myers: Yeah, I was like (overlapping).

19 Mr. Sutton: (Overlapping).

20 Ms. West: I know. I was lost on that one.

21 Mr. Myers: Okay. On Exhibit 2, the second tab.

22 Mr. Sutton: Can I ask one question? Do you mind?

23 Mr. Myers: Sure.

24 Mr. Sutton: Do you even remember whether you were there in this meeting?

25 Ms. Kelly: I don't remember discussing any of these things. I mean, I just
26 don't remember going to a meeting and like talking about like house
27 party locations or where to put the window signs or like any of that.

28 Ms. West: Huh, and this was at Supervisor Aliota-Pier's house. So, I don't

know if that helps you remember if you were there or not.

Ms. Kelly: I may have been to her house before.

Ms. West: Okay.

Mr. Sutton: If I can try. I understand why Supervisor Allota-Pier didn't run for office, right?

Ms. West: Uh-huh.

Mr. Sutton: Yeah. So, it was this week, right?

Ms. West: It was.

Mr. Sutton: I mean, you guys know the actual date of when the --

Mr. Myers: I thought it was late August.

Mr. Sutton: -- Court of Appeal decision came down. I mean, it was right then.

Mr. Myers: Yeah, it was right then.

Ms. West: Right. It was right at this time.

Mr. Sutton: And I'm kind of with Margaux that, you know, it's getting her people together.

Ms. West: Uh-huh.

Mr. Sutton: So, it's talking about how she's going to endorse him, and I don't mind saying, it's a big deal, right --

Ms. West: Right, right.

Mr. Sutton: -- you know, because --

Ms. West: Of course.

Mr. Sutton: -- she hadn't endorsed anyone --

Ms. Kelly: Huh-uh.

Mr. Sutton: -- you know, and I saw the same thing. I said, well, you wouldn't put up window signs that said, I guess you might, saying Aliota-Pier endorsed Farrell. This could have been something separate, right? This is you talking to Mark and Chris and yet you sound like 25 emails a day. This could be a separate, like not necessarily why

1 you're bringing them for the meeting. I don't know.

2 Ms. Kelly: I don't remember going over the specifics of this with them ever, so

3 —

4 Ms. West: Okay.

5 Ms. Kelly: — yeah.

6 Mr. Sutton: Yeah, okay.

7 Ms. Kelly: They never ended up helping us in these ways.

8 Ms. West: They meaning Supervisor Allota-Pier's people?

9 Ms. Kelly: Yeah.

10 Ms. West: Okay.

11 Mr. Sutton: If that makes sense,

12 Ms. Kelly: Yeah. They were lazy.

13 Mr. Sutton: I don't know about that, but that's your job. I mean, that's your job.

14 Yeah, yeah, yeah.

15 Ms. Kelly: Yeah, yeah, yeah. Yeah, yeah.

16 Mr. Sutton: So, you would know, okay.

17 Mr. Myers: Okay. So, on the second tab that's (inaudible). [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Ms. Kelly: Yeah.

21 Mr. Myers: Okay. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED] So, at that meeting, you don't think that was discussed

27 with the list or anything like that, not to your knowledge?

28 Ms. Kelly: Which?

1 Mr. Myers: At the prior meeting?

2 Ms. Kelly: Which list?

3 Mr. Myers: The list that's referenced here, the getting the list from Stefani.

4 Ms. Kelly: Do I think this list was discussed at that meeting?

5 Mr. Myers: Yes.

6 Ms. Kelly: No. I mean, I don't remember. I mean, I'm sure that meeting was
7 about her endorsement whereas this email is about once she had
8 endorsed Mark, then I know after that she was going to send a
9 fundraising e-blast out with her saying --

10 Ms. West: This is probably about that, the fundraising e-blast.

11 Ms. Kelly: -- that --

12 Ms. West: Right, because it's about the fundraising e-blast tags and getting
13 the list from Stefani. Is the list --

14 Mr. Myers: They -- I don't --

15 Ms. Kelly: -- I'm confused.

16 Mr. Myers: No, no, no. It's that who is she fundraising for? Is she fundraising
17 for Mark? Is she fundraising for maybe some other group?

18 Ms. Kelly: Oh, no. She's fundraising for Mark, the candidate.

19 Ms. West: Right, okay.

20 Mr. Myers: Okay.

21 Ms. West: Thank you.

22 Mr. Sutton: Yeah, yeah, yeah.

23 Ms. West: Yeah.

24 Mr. Sutton: We don't have to be shy about what's going on here, right?

25 Ms. West: Right.

26 Mr. Sutton: Yeah.

27 Ms. West: Okay, and then the list from Stefani, is that a list of her fundraisers,
28 Aliota-Pier's?

1 Ms. Kelly: It's a list of people who have given to Michela in the past.
2 Ms. West: Okay.
3 Ms. Kelly: Yeah,
4 Mr. Sutton: So, Michela hit up all of her prior contributors.
5 Ms. Kelly: Yeah.
6 Mr. Sutton: Said, hey, I just endorsed Mark Farrell –
7 Ms. Kelly: Yeah.
8 Ms. West: Right.
9 Mr. Sutton: – and you should write him a check.
10 Ms. Kelly: Yeah.
11 Mr. Sutton: Yeah, okay.
12 Ms. West: Okay.
13 Ms. Kelly: That's all we've got.
14 Mr. Myers: That makes sense.
15 Mr. Sutton: Yeah.
16 Mr. Myers: Okay. On Exhibit 3. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] What would the text be?
20 Ms. Kelly: That I endorsed Mark Farrell and that he's the most qualified
21 person for the position.
22 Mr. Myers: So, Supervisor Allota-Pier's staff actually wrote the endorsement?
23 Am I reading that?
24 Ms. Kelly: No, I mean, it says that they're sending the list to him in an hour. I
25 don't know who wrote the text.
26 Mr. Myers: Okay.
27 Ms. West: We're still talking about the fundraising (inaudible), right?
28 Mr. Sutton: Doesn't matter, and that they wrote the –

1 Ms. Kelly: Oh yeah. No, no, no. I mean, it says they're sending the text, but I
2 just don't know who wrote it.
3 Ms. West: Yeah.
4 Ms. Kelly: I can't say specifically it was Bill or if it was -- I don't know.
5 Mr. Myers: Okay.
6 Mr. Sutton: Didn't like 85 copies of her email end up in the --
7 Ms. West: Yeah.
8 Mr. Myers: Yeah.
9 Mr. Sutton: -- if I remember. I think, yeah.
10 Ms. Kelly: Yeah, I know that.
11 Mr. Sutton: And you've seen that email.
12 Ms. Kelly: They're everywhere.
13 Mr. Sutton: Yeah, exactly.
14 Ms. Kelly: They're everywhere, yeah.
15 Mr. Sutton: Because then they get forwarded, yeah.
16 Ms. West: We've seen that.
17 Ms. Kelly: It's pretty standard, I mean, like fundraising email formats and
18 (inaudible).
19 Ms. West: Uh-huh.
20 Mr. Myers: Okay. On Exhibit 4. So, [REDACTED]
21 [REDACTED]
22 [REDACTED] So,
23 again, that's the same list that we were referring to in the other.
24 Ms. Kelly: Yeah.
25 Mr. Myers: Okay.
26 Ms. Kelly: Yeah.
27 Mr. Myers: And so, once you guys received that list, did you immediately start
28 using it, calling the people on there, soliciting for contributions?

1 Ms. Kelly: We sent out a fundraising e-blast with their donors. I can't say that
2 Mark actually called any of them. Mark was pretty good at being
3 able to fundraise from his own list.
4 Mr. Myers: Okay. Did you have a question?
5 Ms. West: No.
6 Mr. Myers: Okay. On Exhibit 5. So, [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] Catherine
11 Aliota-Pier's scheduler?
12 Ms. Kelly: Right.
13 Mr. Myers: Is that how that worked?
14 Ms. Kelly: Uh-huh.
15 Mr. Myers: And so were these events kind of where she would speak in favor
16 of Mark Farrell? Is that kind of what was going here?
17 Ms. Kelly: Yeah.
18 Mr. Sutton: These are all house parties.
19 Ms. Kelly: These are all house parties, even the ones that are at like Bin 38's
20 a restaurant location. It's a restaurant location -
21 Mr. Sutton: Uh-huh.
22 Ms. Kelly: - but they're just defined under house party. They're just events -
23 Mr. Sutton: Okay.
24 Ms. Kelly: - for voters to come.
25 Ms. West: Uh-huh.
26 Mr. Myers: These are the six? [REDACTED]
27 [REDACTED]
28 [REDACTED]

[REDACTED] What

would be the things that Mark would need from Michela?

Ms. Kelly: I mean, most of the things that she did was she'd come to events and speak, so it may have been about additional events that he wanted her to go to.

Mr. Myers: Okay.

Mr. Sutton: Bill asked me to give Margaux the things we needed for Michela, okay.

Mr. Myers: Do you recall them meeting often?

Ms. Kelly: No rarely. They may have met a couple of times after she endorsed. She's busy.

Mr. Myers: Sure.

Ms. Kelly: Yeah.

Mr. Myers: Exhibit 7. [REDACTED]

[REDACTED] First of all, who is Natalie a LeBlanc?

Mr. Sutton: Before you do this, make certain. Are these -

Ms. West: Has she seen this email before?

Mr. Myers: I hope -- not, so I'm sorry.

Mr. Sutton: -- so, this is not an email that you got from us.

Mr. Myers: Correct.

Mr. Sutton: Okay, okay. So, why don't you -

Ms. Kelly: I don't know Natalie. I'd never seen her name before.

Mr. Myers: Or Suki Kott?

Ms. Kelly: I do know Suki, yeah.

Mr. Myers: And who is she?

Ms. Kelly: She's an acquaintance -

1 Mr. Myers: Huh.
2 Ms. Kelly: — and she's a District 2 resident and a friend of Catherine's.
3 Mr. Myers: Okay [REDACTED]
4 [REDACTED]
5 [REDACTED] So, you don't know Natalie LeBlanc?
6 Ms. Kelly: Huh-uh.
7 Mr. Myers: But her and Catherine Stefani and Suki Kott and Bill are all talking
8 about pictures of Michela and Mark and below that, fundraising, but
9 you don't know anything about what they would be referring to?
10 Ms. Kelly: I mean, I think the fundraising e-blast that we sent out had a picture
11 of Mark and Michela on it.
12 Mr. Myers: Okay.
13 Mr. Sutton: But you have no reason to think this has —
14 Ms. West: Personal grudge.
15 Mr. Sutton: — anything to do with a fundraising email sent out by the Farrell
16 campaign?
17 Ms. Kelly: No. I don't know Natalie nor have I had any contact with her and so
18 if she's referring to some sort of fundraising, I don't know anything
19 about it.
20 Mr. Sutton: [REDACTED] Yeah. So, this is (inaudible).
21 Mr. Myers: Just because at the bottom, how I came to this and I realize that
22 [REDACTED]
23 Mr. Sutton: Well, this looks like we (inaudible) office in January (inaudible) Mark
24 Farrell. This sounds like that email that we've seen 85 copies of.
25 Mr. Myers: Okay.
26 Mr. Sutton: Right?
27 Ms. Kelly: Yeah. I don't know what that is.
28 Mr. Myers: You know, there could be a chance too that, I mean, we received —

1 Mr. Sutton: Wait, what Margaux's saying that the footer, NG3 mail yahoo com
2 neo launch. What all does that mean? Do you know what that
3 means, what a launch is?

4 Mr. Myers: No.

5 Ms. Kelly: I wonder if that's part of the -- how could that be part of an e-blast
6 though? It's weird that like why would the end of her email be here
7 and then all of a sudden we start with the end of Michela's --

8 Ms. West: Yeah.

9 Ms. Kelly: -- text on her.

10 Mr. Myers: Huh.

11 Ms. Kelly: You know?

12 Mr. Myers: Well, I mean, it could be a thing to where we've been ciphering
13 through hundreds of emails --

14 Ms. Kelly: Yeah, I know.

15 Mr. Myers: -- (inaudible), okay. It's just a question I had (inaudible).

16 Mr. Sutton: So, the big email that there's so many copies of it here that Michela
17 sent out, but that would go in an email blast and wouldn't have your
18 name on it.

19 Ms. Kelly: No.

20 Mr. Sutton: You could have forwarded that to God knows whom for whatever
21 reason, right?

22 Ms. Kelly: Well, and certainly Mark needed to see the text before we sent it
23 out.

24 Ms. West: Uh-huh.

25 Mr. Myers: Okay.

26 Ms. Kelly: So, if I forwarded it to --

27 Mr. Sutton: So, it still could have been a draft?

28 Ms. Kelly: Yeah.

1 Mr. Sutton: Who knows?
2 Mr. Myers: Okay.
3 Ms. Kelly: Yeah.
4 Mr. Sutton: So, then there's that weird thing at the bottom and are you guys
5 certain this is the second page of the same email?
6 Mr. Myers: No, now that I'm looking at, it actually does –
7 Ms. Kelly: But even the font is different.
8 Mr. Sutton: Well, the footer is the same.
9 Mr. Myers: – Is the same.
10 Mr. Sutton: The date's the same.
11 Mr. Myers: Yeah, and again, when some people print them off, their emails as
12 you guys probably know –
13 Mr. Sutton: Did you see Mark's emails?
14 Mr. Myers: I know.
15 Mr. Sutton: I've been trying to figure them out because of this –
16 Mr. Myers: – It could be –
17 Ms. West: Yeah.
18 Mr. Sutton: -- email thing, yeah.
19 Ms. West: They were awful (overlapping).
20 Mr. Sutton: And then the attachments he wanted and he kept telling me –
21 Ms. West: Yeah.
22 Mr. Sutton: – he couldn't get them and I'm like, what do you mean you can't get
23 them? It says attachment right there.
24 Ms. West: Yeah.
25 Mr. Sutton: But anyway, so then whatever that is with you, but then this
26 different font email –
27 Mr. Myers: Sure.
28 Mr. Sutton: – you definitely have nothing to do with.

1 Ms. Kelly: No.
2 Mr. Myers: Okay.
3 Ms. Kelly: I've never exchanged an email with Natalie.
4 Ms. West: Okay.
5 Mr. Myers: Okay.
6 Ms. Kelly: Yeah.
7 Mr. Sutton: That you know of.
8 Ms. Kelly: To my knowledge.
9 Ms. West: That would be an attorney speech.
10 Mr. Sutton: Yeah, exactly. They're going to say, well, what about this one right
11 here?
12 Ms. West: Oh, what about this one, yeah?
13 Mr. Sutton: That's only the local ethics commissioners that do those gotchas.
14 Ms. West: Yeah.
15 Mr. Sutton: Yeah. They love to gotchas.
16 Mr. Myers: Okay, on Exhibit 8, and again, this is going to be one that you
17 probably haven't seen before.
18 Ms. Kelly: Okay.
19 Mr. Myers: [REDACTED]
20 [REDACTED] Are you familiar with Winning Directions at all?
21 Ms. Kelly: Yeah. They did the art layout for our door hanger.
22 Ms. West: When you say our, you mean Farrell campaign?
23 Ms. Kelly: The campaign.
24 Mr. Myers: Okay.
25 Ms. Kelly: Very early on in the campaign.
26 Mr. Sutton: I'm sorry. All of that gobbly gook.
27 Mr. Myers: So, when do you think that they stopped working for you guys?
28 Ms. Kelly: They stopped working for us, I don't know the exact date, but we

1 got an email from Winning Directions letting us know that they
2 couldn't be our vendor anymore.
3 Ms. West: Did they say why?
4 Ms. Kelly: Standard email about they, you know, they may or may not be
5 participating in other -
6 Mr. Sutton: You can say it. It's not a bad word.
7 Ms. Kelly: - no, but I'm trying to think of how it's actually phrased. I mean
8 they, you know, may be doing Independent Expenditures that year,
9 so they had to cut off communication with us altogether.
10 Mr. Myers: So, they cut off communication with you, but Michela's still talking
11 about copy for a door hanger. I mean, you said early in the
12 campaign and this one's dated October 21st, so I don't -
13 Ms. Kelly: They didn't print anything for us after they sent us that email. So,
14 we didn't receive anything from Winning Directions after -
15 Ms. West: Okay and you didn't have any communication with Winning
16 Directions after that.
17 Ms. Kelly: No.
18 Mr. Sutton: Do you have the date of that email?
19 Ms. West: This em -
20 Mr. Sutton: No, the one where Winning Directions told them -
21 Ms. West: - we don't have that.
22 Mr. Myers: No. I've never seen that.
23 Ms. West: That wasn't produced for us. So, we don't have that. Really?
24 Mr. Myers: Oh.
25 Ms. West: Oh, you missed it.
26 Mr. Myers: I missed it. I missed it.
27 Ms. West: Not that I'm placing blame, but I'm just saying.
28 Mr. Sutton: Yeah, yeah.

1 Mr. Myers: Nobody's placing blame.
2 Ms. West: I'm not saying anything.
3 Mr. Sutton: No, no. I will say I've seen the email.
4 Ms. West: But you produced that email.
5 Mr. Sutton: We've talked about that email. So, that's my understanding –
6 Ms. West: Okay.
7 Mr. Sutton: –and we'll get it for you, yeah, yeah.
8 Ms. West: Thank you.
9 Mr. Myers: Okay. Go ahead.
10 Mr. Sutton: So, getting back to the same comment earlier when there was that
11 thing about the fundraising list and we confirmed for them that this
12 was Michela sending an email to her list raising money for Farrell –
13 Ms. West: Yeah.
14 Mr. Sutton: – looking at it, actually I can even find the email, this was not your
15 email, and this is not your door hanger.
16 Ms. Kelly: No. We did not receive a door hanger from them after we –
17 Ms. West: Okay, because even though it refers to a Farrell door hanger you're
18 saying is not related to anything you did, the Mark Farrell
19 committee.
20 Ms. Kelly: Not our campaign.
21 Ms. West: Right.
22 Mr. Sutton: You know what? I'm just going to do it because we know we gave
23 this to you.
24 Ms. West: What is that?
25 Mr. Sutton: This is August 19th.
26 Ms. West: Okay.
27 Mr. Sutton: So, this is, I think, helpful.
28 Ms. West: (Overlapping), thank you.

1 Mr. Sutton: (Inaudible).
2 Mr. Myers: Thank you. (Inaudible).
3 Ms. West: Well, he could have.
4 Mr. Myers: I could have very well missed it though. I've been known to
5 (inaudible).
6 Ms. Kelly: It's okay. It'll be helpful to you.
7 Ms. West: Well, there were so many copies made. It could be -
8 Mr. Myers: Yeah, lots of emails.
9 Ms. West: - just stuck in a machine and never seen again. We made so
10 many copies.
11 Mr. Myers: You giving me the benefit of the doubt? You getting soft?
12 Ms. West: I'm trying. You make it difficult.
13 Mr. Sutton: So, who knows whose door hanger this is.
14 Ms. Kelly: It wasn't one that our campaign received.
15 Ms. West: Right. We were just -
16 Mr. Myers: Uh-huh.
17 Ms. Kelly: Yeah.
18 Ms. West: - looking for confirmation that it wasn't yours.
19 Ms. Kelly: Yeah, yeah. No.
20 Mr. Sutton: But as far as you remember, Winning Directions did do a door
21 hanger for the Farrell campaign -
22 Ms. Kelly: Yes.
23 Mr. Sutton: - earlier on.
24 Ms. Kelly: Very early.
25 Ms. West: Then it must be in August, July something.
26 Ms. Kelly: Oh, it was like -
27 Mr. Myers: You said three?
28 Ms. Kelly: - it was probably February of 2010.

1 Ms. West: Okay. So, that was way before the endorsement came out. So,
2 this door hanger should look completely different.
3 Mr. Sutton: Yeah, (Inaudible) too. So, this is the –
4 Ms. Kelly: And that would be on file with the Ethics Commission, right?
5 Because don't you have to do copies of all your door hangers and
6 everything is that correct?
7 Mr. Sutton: Not the campaigns.
8 Ms. West: Just the IEs?
9 Mr. Sutton: The campaigns do mail.
10 Ms. Kelly: I don't know. Maybe if it's over a certain number?
11 Mr. Sutton: No. San Francisco candidates give mail pieces. Independent
12 Expenditures give everything.
13 Ms. West: Okay.
14 Ms. Kelly: We didn't actually mail it.
15 Mr. Sutton: Right. Do you want our door hanger?
16 Ms. West: No. I was just wondering if it was easy –
17 Mr. Sutton: Yeah,
18 Ms. West: – to get (Inaudible).
19 Mr. Sutton: Yeah. Yeah, so here, Tony Fazzio, Winning Directions –
20 Mr. Myers: Uh-huh.
21 Mr. Sutton: – will be working on a series of projects that may result in
22 Independent Expenditures in this area of San Francisco, probably
23 Supervisors races. To maintain the utmost compliance, blah, blah,
24 blah –
25 Ms. West: Uh-huh.
26 Mr. Sutton: – cease all forms of communications.
27 Ms. West: Yeah. I recall that.
28 Mr. Sutton: And that's (Inaudible) Chris Lee who was the Farrell campaign's

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consultant.

Ms. West: Okay, thank you.

Mr. Myers: Exhibit 9, and this one's going to be a new one for you also, the middle of the page. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ms. Kelly: What's an interstitial?

Ms. West: I guess that's when they -

Mr. Myers: Yeah.

Ms. West: - take over for 28 hours, a whole page in the Chronicle.

Mr. Myers: Yeah.

Ms. West: I had never heard that term before.

Mr. Myers: Me neither.

Mr. Sutton: What is it?

Ms. West: He puts in parentheses what -

Mr. Myers: Yeah. He puts this in parentheses - I didn't know what it was

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Mr. Sutton: I'm sorry to interrupt. Do you know whether he made a

1 contribution? Do you remember?
2 Ms. Kelly: I don't think he ever made a personal one.
3 Mr. Sutton: Okay.
4 Mr. Myers: And do you know why Natalie LeBlanc and Richard Schlackman
5 would be keeping Supervisor Allota-Pier apprised of how much that
6 they're spending when she's not running for anything? I mean, she
7 seems really involved in the campaign right now yet she's not
8 running for any office.
9 Ms. Kelly: I don't know.
10 Mr. Sutton: I get it.
11 Ms. Kelly: I don't know.
12 Ms. West: Did you have conversations with -
13 Mr. Sutton: So, if I'm being (inaudible), this is the government agency, right,
14 trying to prove their case, yeah.
15 Ms. West: Did you have any conversations with Rich Schlackman during this
16 election period about campaign related, anything having to do with
17 Mark Farrell's campaign or any other campaign?
18 Ms. Kelly: No.
19 Ms. West: Okay. Or anyone that worked for him to your knowledge? I know
20 you say you aren't familiar with Natalie LeBlanc.
21 Ms. Kelly: I actually don't know anybody who works at MSHC Partners.
22 Ms. West: And were you privy to any conversations with Supervisor Allota-Pier
23 where either you heard second hand or first hand that her
24 involvement in getting Mr. Farrell elected?
25 Ms. Kelly: Was I part of any conversations?
26 Ms. West: Yes, or do you have any knowledge of that?
27 Mr. Sutton: If I can interject; about?
28 Ms. West: About Supervisor Allota-Pier's involvement in Supervisor Farrell's

election or trying to get him elected, if she was privy to any conversations.

Mr. Sutton: Right. If I can kind of maybe focus the question to make certain that she doesn't say anything that could be -- whatever the date was that she announces that she's not -- it's early September when she said, I'm not running and I want you to vote for Mark Farrell.

Ms. West: Yes.

Mr. Sutton: So, that I think is one thing. Were you involved with Michela --

Ms. Kelly: Oh.

Mr. Sutton: -- or around that?

Ms. Kelly: Yeah, I mean, we got together with her to talk about her endorsement for Mark.

Ms. West: And after that, was there any further communication with her regarding her support?

Ms. Kelly: Her attending events? She came to events.

Ms. West: Was that the extent of it?

Ms. Kelly: And the fundraising list.

Ms. West: Okay and you never spoke to her or any of her representatives about her possibly helping the Independent Expenditure Committee?

Ms. Kelly: No.

Ms. West: Okay, but you also never heard anything even if you weren't privy to the conversation hearing secondhand that she was involved?

Mr. Sutton: I want to make certain that that in a way was a very specific question Galena asked you which is did you know anything --

Ms. Kelly: Did I know she was involved?

Mr. Sutton: -- did you know that Michela -- you knew about IEs because it's all on the Ethics Commission website --

1 Ms. Kelly: Right.

2 Mr. Sutton: – and one thing that I kind of tried to –

3 Ms. West: And it's very public.

4 Mr. Sutton: – tell people and obviously campaigns are crazy to try to figure out

5 what the IEs are doing.

6 Ms. Kelly: Yes.

7 Mr. Sutton: So, that's one thing, but did you know that Michela was, and I don't

8 even know, were there other IEs for Farrell besides this one? I

9 don't know, but did you have any knowledge or did you know that

10 Michela was involved in this IE Committee?

11 Ms. Kelly: I don't know if I knew specifically, but she was. We didn't talk about

12 it.

13 Ms. West: Okay.

14 Ms. Kelly: So, yeah.

15 Mr. Sutton: You know what? I'd like you to – what you just said, I think, is very

16 important for them to hear which you haven't had the opportunity to

17 say which is when you said we didn't talk about it. What do you

18 mean?

19 Ms. Kelly: The communication that I had with her and her staff related to

20 events that she was going to attend for Mark and for the fundraising

21 list or anything outside of that like was all we talked about.

22 Ms. West: Okay.

23 Ms. Kelly: Yeah.

24 Ms. West: Okay and you're friends with Catherine Stefani, is that correct?

25 Ms. Kelly: She's my current colleague.

26 Ms. West: Current colleague.

27 Ms. Kelly: Yeah.

28 Ms. West: You didn't know her before when she was working for Supervisor

1 Aliota-Pier?

2 Ms. Kelly: Just as an acquaintance.

3 Ms. West: Okay and so, you wouldn't have had casual conversations with her
4 during that time as well.

5 Ms. Kelly: Well, she was Supervisor Aliota-Pier's scheduler so, I mean, we
6 were cordial to each other.

7 Ms. West: Okay.

8 Ms. Kelly: We weren't strangers.

9 Ms. West: And Bill Barnes?

10 Ms. Kelly: Same relationship.

11 Ms. West: Okay and you worked with Chris Lee on the campaign, and did you
12 ever have conversations with Chris Lee about the Independent
13 Expenditure Committee or Jack Helfand or were privy to
14 conversations?

15 Mr. Sutton: Wait. Conversations with Chris -

16 Ms. West: With Chris.

17 Mr. Sutton: - about IEs.

18 Ms. Kelly: Yeah, I mean, we talked about that they exist -

19 Ms. West: Okay.

20 Ms. Kelly: - in general.

21 Ms. West: But not specifically contacting them or providing guidance.

22 Ms. Kelly: No. I know that we're not allowed to communicate.

23 Ms. West: Okay.

24 Ms. Kelly: Yeah.

25 Ms. West: Do you know Jack Helfand?

26 Ms. Kelly: He's a supporter of Mark's.

27 Ms. West: Okay.

28 Ms. Kelly: Yeah. He threw a fundraiser for Mark early on in the campaign.

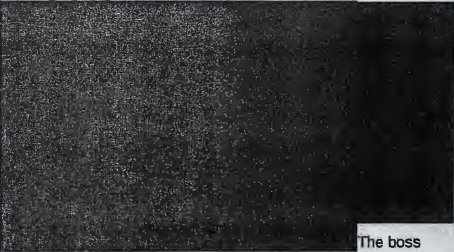
1 Ms. West: Do you know of any conversations he may have had with Chris Lee
2 regarding the Independent Expenditure Committee he set up?
3 Ms. Kelly: I don't know.
4 Ms. West: Okay.
5 Ms. Kelly: Yeah.
6 Ms. West: Don't worry. I don't have anything else. No, I'm just kidding, but it's
7 difficult because there are so many different players.
8 Ms. Kelly: Yeah, yeah.
9 Ms. West: I'm trying to figure out who was talking to whom and what was
10 going on and, you know, a final question. You don't have any
11 personal knowledge of Mark Farrell communicating with Jack
12 Helfand or the Independent Expenditure Committee after its
13 formation or when it was forming?
14 Ms. Kelly: Yeah, I don't know. I don't know that they had communication.
15 Ms. West: Okay. As his scheduler, would you set up all his meetings?
16 Ms. Kelly: Yeah.
17 Ms. West: And so if he had a meeting with Jack Helfand, you would know?
18 Ms. Kelly: Yep.
19 Ms. West: And you can't recall any meeting that they had –
20 Ms. Kelly: Yeah, no.
21 Ms. West: – during this early September time period?
22 Ms. Kelly: I don't remember them ever meeting.
23 Ms. West: Okay.
24 Mr. Sutton: You said that he did an event?
25 Ms. Kelly: He did an event. It was really early. It was very early on in the
26 campaign.
27 Mr. Sutton: What would early be?
28 Ms. Kelly: May.

1 Mr. Sutton: Oh, way early.
2 Ms. West: Oh, earlier, okay.
3 Mr. Myers: Earlier then.
4 Ms. Kelly: Yeah.
5 Ms. West: Okay.
6 Ms. Kelly: It would have been something I scheduled, that I remember, I
7 mean, I remember that about it.
8 Ms. West: I know you said that you had communications with Supervisor
9 Aliota-Pier for her appearances and things like that. Were there a
10 lot of meetings between her and Mark Farrell during this campaign
11 season?
12 Ms. Kelly: I don't know if they actually met after the initial endorsement
13 conversation.
14 Ms. West: Okay.
15 Ms. Kelly: They did not meet regularly.
16 Ms. West: Okay and did you schedule any meetings for Mark Farrell with Rich
17 Schlackman during this time?
18 Ms. Kelly: Huh-uh.
19 Ms. West: Okay, pretty much knew the answer but I have to ask.
20 Ms. Kelly: Yeah.
21 Mr. Myers: Yeah.
22 Ms. West: Okay.
23 Mr. Myers: Yeah.
24 Mr. Sutton: I just want to make certain that there are other emails that you -
25 Ms. West: I don't know what else is in here.
26 Mr. Sutton: - want us to look at it? There's Margaux Kelly. Sorry, not Janet
27 Reilly.
28 Mr. Myers: Not Janet Reilly.

1 Ms. West: Yeah (inaudible). It's around ten.
2 Mr. Myers: Who's Ariel Ungerlaider? I'm sure I butchered that.
3 Ms. Kelly: No, no. That's right. During the campaign, she was an
4 acquaintance. She's a friend.
5 Mr. Myers: I mean, besides the blatantly obvious because that's a competitor,
6 is there any significance to the link?
7 Ms. Kelly: From me sending this to them?
8 Mr. Myers: Uh-huh, I mean, I just noticed because in up top, Catherine sent it
9 to Supervisor Aliota-Pier too.
10 Ms. Kelly: Oh.
11 Mr. Myers: Or how about do you know where the website actually came from, I
12 mean, was that something you guys created or no?
13 Ms. Kelly: No. We definitely didn't create it.
14 Mr. Myers: Sorry, uh-huh.
15 Ms. Kelly: I think somebody told me about it, and so I forwarded it to them. It
16 was on the Internet -
17 Mr. Sutton: Do you remember what it was?
18 Ms. Kelly: - swirling around.
19 Mr. Sutton: No.
20 Mr. Myers: Okay.
21 Ms. Kelly: It was a photo of Supervisor Daly, I think, like peering by in the
22 curtain. I think that's what it was.
23 Ms. West: Why would you send it to these two, Ariel and Catherine?
24 Ms. Kelly: Because it was out there in the universe and I couldn't believe it
25 existed.
26 Ms. West: Did you send it to Catherine because of who she worked for, for
27 Supervisor Aliota-Pier or because you say you don't have a
28 personal relationship with her, so it's - trying to figure it out.

1 Ms. Kelly: Her boss endorsed my boss.
2 Ms. West: Uh-huh.
3 Ms. Kelly: So, the status of what's going on -
4 Ms. West: Okay.
5 Ms. Kelly: - out there.
6 Ms. Myers: Uh-huh.
7 Ms. West: And then Ariel, you sent it to her because you were friends?
8 Ms. Kelly: Yeah, I mean, I think I more sent it them just to - yeah.
9 Ms. West: Okay.
10 Mr. Sutton: It sounds like you're saying that the website was one of these kind
11 of -
12 Ms. West: It was wld.
13 Ms. Kelly: It was funny.
14 Ms. Myers: Yeah, it's just a funny thing.
15 Mr. Sutton: And is it still around?
16 Ms. West: I'm not -
17 Mr. Myers: I tried to type it in and it's not there.
18 Ms. Kelly: Oh, it's not there?
19 Mr. Sutton: It's gone.
20 Ms. Kelly: If my memory serves, it's a very overly stylized photo and it's just -
21 I don't know.
22 Mr. Sutton: So, it was just a photo.
23 Ms. Kelly: It's just a photo.
24 Mr. Sutton: It wasn't like a nasty Janet Reilly hit piece kind of thing?
25 Ms. Kelly: It was something about like that man behind the curtain or
26 something like that.
27 Ms. Myers: Okay, because the man behind the curtain was a maller too, wasn't
28 it? I believe. Didn't it go out?

1 Ms. West: Uh-huh.
2 Ms. Kelly: Yeah, I don't know.
3 Mr. Myers: Mark Farrell's campaign did not put that mailer out though.
4 Ms. Kelly: No.
5 Ms. West: Oh, okay.
6 Mr. Myers: Yeah.
7 Ms. Kelly: Uh-huh.
8 Mr. Myers: And then that mailer --
9 Mr. Sutton: No.
10 Mr. Myers: -- was on the website also, so the people who put the mailer out,
11 could have made the website also?
12 Ms. Kelly: I assume so. It's the same graphic.
13 Mr. Myers: Yeah, okay. On Exhibit 11.
14 Mr. Sutton: Let's do it here.
15 Mr. Myers:
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The boss

would be --

Ms. Kelly: Who, my boss?

Mr. Myers: -- yeah.

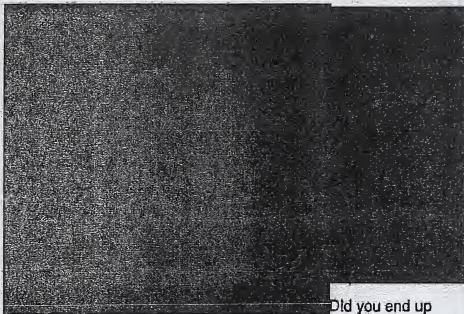
Ms. West: Uh-huh.

Ms. Kelly: Yeah.

1 Mr. Myers: That's Mark Farrell?

2 Ms. Kelly: Yeah.

3 Mr. Myers:



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Did you end up
going to wine and dinner?

15 Ms. Kelly: Yeah, I was there.

16 Mr. Sutton: Where was it?

17 Ms. Kelly: It was at the place, Parma, in the marina?

18 Mr. Sutton: The marina.

19 Ms. Kelly: Yeah.

20 Mr. Sutton: Uh-huh.

21 Mr. Myers: And was Catherine there?

22 Ms. Kelly: Catherine was there.

23 Mr. Myers: And what about Bill? Did Bill make it?

24 Ms. Kelly: Bill was there, yeah.

25 Mr. Myers: And Rich?

26 Ms. Kelly: Rich, yeah.

27 Mr. Myers: And Ariel and Suki both, everybody made it?

28 Ms. Kelly: I think Suki was there for part of the time. I don't remember if Ariel

1 was there.

2 Ms. West: Who hosted? Who paid for the dinner?

3 Ms. Kelly: I'm sure we all paid. I'm pretty used to paying my own fair share.

4 Mr. Sutton: It's okay if you didn't though.

5 Ms. Kelly: Oh, no. I'm sure we all did. There was quite a few of us.

6 Mr. Sutton: You're sure? I mean, it just sounds to me like Schlackman is

7 hosting.

8 Ms. West: Is being hosted.

9 Mr. Myers: Uh-huh.

10 Ms. West: Yeah, which is the impression that we've gotten --

11 Mr. Myers: Yeah.

12 Ms. West: -- from others.

13 Ms. Kelly: He may have. I don't remember it being like common, I'll host you.

14 I didn't get that feeling when I got the invite.

15 Ms. West: Why do you think he was hosting everyone because you said he

16 was --

17 Ms. Kelly: If they were working with him --

18 Ms. West: -- they, well, see because they are staff of Supervisor Aliota-Pier,

19 right?

20 Mr. Sutton: Can I ask one question? When was Mark elected?

21 Ms. Kelly: November.

22 Mr. Sutton: You know there was that dumb (inaudible), you know, he wasn't

23 elected for weeks.

24 Ms. Kelly: Hmm.

25 Ms. West: Refresh my memory. It sounds really familiar.

26 Mr. Sutton: That really dumb (overlapping).

27 Ms. Kelly: Oh, because of the (overlapping).

28 Mr. Sutton: Yeah, yeah.

1 Ms. Kelly: 20 days or something.
2 Ms. West: Yeah, because it was a second and the third and – okay, yeah.
3 Mr. Sutton: Exactly, exactly, and then at some point, Reilly did a recount.
4 Ms. West: Uh-huh.
5 Mr. Sutton: So, when he declared and then she sent that horrible email, the
6 worst concession email that –
7 Ms. West: Uh-huh.
8 Mr. Sutton: – you'd ever –
9 Ms. Kelly: Yeah.
10 Ms. West: Really?
11 Mr. Sutton: – yeah, and then when it went –
12 Ms. West: See, those are the things you should give us. At least we have
13 entertaining (overlapping) to read.
14 Mr. Myers: Yeah.
15 Mr. Sutton: Exactly, exactly.
16 Ms. Kelly: That's pretty bad.
17 Mr. Sutton: It was. So, my only point is, and it might or may not be relevant to
18 whatever it is you guys are looking at, but I knew that he was
19 elected even though it's November 19th or even the 23rd.
20 Ms. Kelly: I don't remember what day we sent out email out to say that we had
21 won.
22 Mr. Sutton: Yeah. Did we give that to you?
23 Ms. Kelly: And I don't know what day the election was certified.
24 Ms. West: Do you have that one? Did you get that one?
25 Mr. Myers: I think so.
26 Ms. West: (Overlapping).
27 Mr. Sutton: I don't think we looked at anything after the election.
28 Mr. Myers: Yeah, I think I remember that.

1 Mr. Sutton: Wait, wait, wait. November 14th, last jewelry shows.
2 Mr. Myers: Yeah, I think we're just (overlapping).
3 Ms. Kelly: Oh, that's my communication with Flich inviting me to his wife's
4 jewelry show.
5 Mr. Myers: Did you go with (inaudible)?
6 Ms. Kelly: No, I did not go.
7 Mr. Myers: Get some Christmas presents? No?
8 Ms. West: Come on, you can tell us those earrings are from the jewelry show,
9 Ms. Kelly: No. I didn't go.
10 Mr. Myers: (Overlapping).
11 Mr. Sutton: (Overlapping).
12 Ms. West: Okay.
13 Mr. Sutton: Oh, here we are. Janet was not exactly gracious in her concession.
14 This is November 17th. Okay.
15 Ms. West: So, it must have already happened because --
16 Mr. Sutton: Oh, yeah, yeah, yeah. Here we go. Here we go. It was Janet, who
17 I've known since she worked for Mayor Roden, who is a
18 professional and she intelligent and she's consummate and she ran
19 a phenomenal campaign, no offense, I thought.
20 Mr. Myers: Huh.
21 Mr. Sutton: Her husband's a whole other matter. The email was like, you know,
22 I only lost because of nasty IEs and I only lost because of this and it
23 was --
24 Mr. Myers: Yeah.
25 Ms. West: Hmm.
26 Mr. Sutton: -- yeah, it was weird.
27 Ms. West: Some people don't handle losing well.
28 Mr. Sutton: Yeah, yeah.

1 Ms. West: Especially (inaudible) get your voting, I don't think anybody does.
2 Mr. Sutton: Yes, exactly, and that's fair enough. We know that according to
3 this email at least, that on November 17th, I feel compelled to
4 respond to generalized comments in the recent campaign, on the
5 18th.
6 Ms. West: So, this was after.
7 Mr. Sutton: So, that was after, okay. Good.
8 Ms. West: Okay. Well, what we're curious of is that since Rich Schlackman
9 was not doing any work for the Aliota-Pier campaign at this time
10 and --
11 Mr. Myers: Yeah.
12 Ms. West: -- he also wasn't doing any work for the Farrell campaign at this
13 time, why he would host a celebration get together for the staffs of
14 both and if you could help us understand how this party or the tone
15 of the party came about.
16 Ms. Kelly: I think by that time, if Mark had already been elected, we probably
17 were already talking about legislative aids, and so Catherine and I
18 at that time had become friends.
19 Ms. West: Okay.
20 Ms. Kelly: She was potentially going to be my new colleague.
21 Mr. Sutton: Oh. Well, that's interesting.
22 Ms. Kelly: Uh-huh.
23 Ms. West: Okay and then how would Rich Schlackman fit into that?
24 Ms. Kelly: I don't know. Ariel invited me.
25 Ms. West: Okay. Ariel's your friend, so do you know if she knows Richard
26 Schlackman and they're friends?
27 Ms. Kelly: I mean, they know each other.
28 Ms. West: Okay. You see why it's weird because it's Richard Schlackman,

1 who supposedly was the mastermind behind the IE Committee –
2 Mr. Sutton: Yeah.
3 Ms. West: – is all of a sudden hosting a get together for the staff of the two –
4 Mr. Sutton: Yeah.
5 Ms. West: – other campaigns. I mean, it's an odd little celebration.
6 Mr. Sutton: Yeah. I don't want to speak out of school, and I don't want to say
7 anything to get anyone in trouble, and I don't quite know what you
8 guys are like after when it's a post-election party. The one thing
9 that you need to know about Rich, I think, is he's a wine and food
10 guy. So, I have been invited – does he still own the wine bar on
11 Market Street?
12 Ms. Kelly: I don't know –
13 Mr. Sutton: I think it's gone.
14 Ms. Kelly: – but he likes to go to parties.
15 Mr. Sutton: He's a wine guy, right? On of these.
16 Ms. West: And if it's a normal thing, I mean, really. It's just one of those
17 hundreds of things that didn't make sense in the case, I mean, he
18 was being perfectly honest when he was saying, we're just trying to
19 fit together these pieces and understand –
20 Mr. Myers: Sure,
21 Ms. West: – all these emails.
22 Mr. Sutton: So, Schlackman has a bar, owned part of a bar or something –
23 Mr. Myers: Uh-huh.
24 Mr. Sutton: – a wine bar on Market Street, and I remember it now. I couldn't
25 tell you if they were pre-election or post-election and when I got
26 invited, they were big, I mean, there were 50 people there.
27 Ms. West: Hmm.
28 Mr. Sutton: You know, a bunch of political hacks were invited, right?

1 Ms. West: Yeah.

2 Mr. Sutton: You know, I mean, that's -

3 Ms. West: This was cozier than that though.

4 Mr. Sutton: - (overlapping), yeah.

5 Ms. West: This was just a very small group of people. Do you remember any

6 conversations from that evening? Was the campaign talked about

7 at all, the Independent Expenditure campaign?

8 Ms. Kelly: No, I mean, we just generally, you know, talked about that Mark

9 won.

10 Ms. West: Because Janet Reilly said in her concession email, it wasn't a topic

11 of discussion that came up when she's accusing the IEs of basically

12 being the swing of the election? That wasn't something you guys

13 were talking about the next day?

14 Ms. Kelly: We were celebrating.

15 Ms. West: Okay.

16 Ms. Sutton: That was perfectly okay to talk about IEs after the (overlapping).

17 Ms. West: It completely is. However, the information that can be gleaned from

18 those conversations is very helpful in an investigation.

19 Ms. Sutton: No, I get it.

20 Mr. Myers: Okay, and the last one, Exhibit 12. [REDACTED]

21 [REDACTED]

22 Mr. Sutton: David?

23 Mr. Myers: Exactly. [REDACTED]

24 [REDACTED]

25 [REDACTED] So, who is David Lemmond?

26 Ms. Kelly: A supporter of Mark's.

27 Mr. Myers: [REDACTED] it looks like my copy is a

28 little bad, [REDACTED]

1 Ms. Kelly: Yeah.
2 Mr. Myers: [REDACTED]
3 Ms. Kelly: Right.
4 Mr. Myers: [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 Ms. Kelly: Right.
9 Mr. Myers: Did he give that to Jack Helfand?
10 Ms. Kelly: I don't know that he gave it to him. I remember at the time thinking
11 that that was, I mean, my exclamation points were like, what?
12 Mr. Myers: Sure.
13 Ms. Kelly: Like he shouldn't even be - David should not be talking to me
14 about this.
15 Ms. West: Uh-huh.
16 Mr. Myers: Okay.
17 Ms. West: And why did you forward it Chris?
18 Ms. Kelly: He was my boss.
19 Ms. West: And do you know if Chris had been in contact with Jack Helfand?
20 Ms. Kelly: I don't know what he did with it after I sent it to him.
21 Ms. West: Okay. Do you know from any other time or conversation that Chris
22 had had contact with the Independent Expenditure Committee?
23 Ms. Kelly: From what I remember, it didn't come up.
24 Ms. West: Okay.
25 Ms. Kelly: I mean, Chris didn't talk about it. I mean, that's not something I
26 remember.
27 Ms. West: Were you surprised when he said he was going to forward it to Jack
28 Helfand? You didn't go in there and say, what are you doing?

1 Ms. Kelly: Well, no, I mean, we weren't sitting in front of each other.
2 Specifically, he was at his office and I was at mine.
3 Mr. Myers: Uh-huh.
4 Ms. West: Is that the last you heard of this contribution and contact?
5 Ms. Kelly: Yeah, (overlapping).
6 Ms. West: Are there any other instances like this where people contacted the
7 campaign?
8 Ms. Kelly: This is the only one that I recall that I ever saw.
9 Ms. West: Okay. We told you this would be painless.
10 Ms. Kelly: Yeah.
11 Mr. Sutton: Can I ask you a question?
12 Ms. West: Sure.
13 Mr. Sutton: So, the four exclamation points, I mean, we obviously put a big
14 sticky on this one. What did you think the four exclamation points
15 meant?
16 Ms. West: [REDACTED]
17 Mr. Sutton: Oh, good.
18 Ms. West: - because -
19 Ms. Kelly: It was not excitement.
20 Ms. West: [REDACTED]
21 Mr. Sutton: Yeah, that's how I took it.
22 Mr. Myers: Yeah.
23 Ms. West: The tone of all your emails -
24 Mr. Sutton: Not that we were worried about you (inaudible) yippee.
25 Ms. West: [REDACTED]
26 [REDACTED]
27 Mr. Myers: Sure.
28 Ms. West: [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Mr. Myers: Yeah.

4 Ms. West: Yeah.

5 Mr. Myers: That's weird, isn't it?

6 Ms. West: That's the tone that we read it for. [REDACTED]
7 [REDACTED]

8 Ms. Kelly: Yeah, because there wasn't.

9 Ms. West: [REDACTED] Oh, great. That Independent Expenditure
10 Committee that I'm trying so hard to avoid even thinking exists is
11 now right in my line of sight.

12 Mr. Myers: Exactly.

13 Ms. West: Yeah, I can't imagine. Just to follow-up, are there any other
14 conversations that you can recall that made you question like you
15 did in that email, that made you say, oh, I'm not really sure with
16 regards to the Independent Expenditure Committee?

17 Ms. Kelly: It wasn't a topic that we talked about so, I mean, it didn't really
18 come up.

19 Ms. West: So, there's nothing that you can recall?

20 Ms. Kelly: I mean, we knew it existed.

21 Mr. Sutton: You know, Margaux, I know that you're doing a great job listening
22 to my advice -

23 Ms. West: You're still not answering my question.

24 Mr. Sutton: - (overlapping) more, but this is one time that I want you to tell me
25 what you told me when we first met which is what was, you know,
26 just talk for yourself, what was your personal understanding about,
27 you know, what you could do, what you couldn't do via these IE
28 Committees.

1 Ms. Kelly: I know that we can't have any communication with them.
2 Mr. Myers: Uh - huh.
3 Ms. Kelly: I mean, it's better to not have any communication at all. You
4 specifically are not supposed to be talking about anything relating
5 to the IE. I mean, if run into them on the street and it's like,
6 whatever, right --
7 Ms. West: Uh-huh.
8 Mr. Myer: Uh-huh.
9 Ms. Kelly: -- but I know you're not supposed to talk about it.
10 Ms. West: Do you know who is involved in the campaign, just your
11 knowledge?
12 Mr. Sutton: In the IE.
13 Ms. Kelly: In the IE?
14 Ms. West: In the IE campaign, because you say that if you see them on the
15 street, you know, you're not going to talk to them about it. Who
16 was it that you were not communicating with?
17 Ms. Kelly: Once the files were online, I knew we weren't supposed to talk to
18 Jack.
19 Ms. West: Okay.
20 Ms. Kelly: Yeah. So, when David's email came in, Chris was like, I'm going to
21 forward it to him, I was like, ah, that's not good.
22 Ms. West: You're all, don't do that.
23 Ms. Kelly: Yeah, yeah.
24 Ms. West: So, back to my question though, were there any other
25 conversations or any other knowledge that you gained through this
26 election that you had that same reaction where you either
27 witnessed something or heard something that made you go, oh, I
28 don't think that's a great idea with regards to the Independent

1 Expenditure Committee?

2 Ms. Kelly: No, because we didn't talk to them.

3 Ms. West: Okay.

4 Ms. Kelly: Yeah.

5 Ms. West: Because sometimes it's not necessarily what you or your, you know

6 —

7 Ms. Kelly: Right.

8 Ms. West: — former staff member does it's that you heard someone else

9 talking —

10 Mr. Myers: Uh-huh.

11 Ms. West: — and you weren't in a conversation about something that they were

12 doing.

13 Ms. Kelly: Yeah.

14 Ms. West: So, that's why I always try to say, you know, within your personal

15 knowledge of something that you —

16 Ms. Kelly: Right.

17 Ms. West: — were privy to.

18 Ms. Kelly: No, not outside of this.

19 Ms. West: Okay.

20 Mr. Sutton: It's not like this campaign we're working with a psycho where the

21 Jack Helfand, the IE person, walks into campaign headquarters —

22 Ms. West: Oh, my.

23 Mr. Sutton: — asks to talk to the manager. Yeah.

24 Ms. West: About what?

25 Mr. Sutton: Well, the person that —

26 Ms. West: The poor kid, he asked for a dollar?

27 Mr. Sutton: — he or she was talking to didn't know who the person was —

28 Ms. West: Oh, wow.

1 Mr. Sutton: — so, the campaign (inaudible) walks by and (inaudible) was there.
2 I was like, what are you doing here?
3 Ms. West: Oh, my God.
4 Mr. Sutton: Yeah, and I don't know if the person who they were talking got fired
5 or not.
6 Ms. Kelly: Oh, my God.
7 Ms. West: Oh, that's rough.
8 Mr. Sutton: Yeah, he's stupid.
9 Ms. West: Yes, very.
10 Mr. Sutton: Yeah. So, you didn't say anything like that? (Inaudible).
11 Ms. Kelly: No, no. Huh-uh, no.
12 Ms. West: You and Jack didn't go to dinner and talk about campaign strategy?
13 Ms. Kelly: No.
14 Ms. West: Oh, that's good.
15 Ms. Kelly: No. I only met Jack that one time.
16 Ms. West: You're all, I swear, I swear. Okay. Well, if you think of anything
17 else or if you think of someone that we should talk to, you know,
18 please let us know because obviously we're just trying to talk to
19 everybody and gather information as much as we can —
20 Ms. Kelly: Yeah.
21 Ms. West: — and you have Mr. Myers' contact information?
22 Mr. Sutton: And you do not call them, you can let me —
23 Ms. West: Right, right.
24 Mr. Sutton: Yeah, yeah.
25 Mr. Myers: (Overlapping).
26 Ms. Kelly: (Overlapping) has it.
27 Ms. West: So, you can talk to Jim and make sure that if there's anything that
28 pops into your head later on —

1 Mr. Myers: Yeah.
2 Ms. Kelly: Okay.
3 Ms. West: — feel free to enlighten us.
4 Ms. Kelly: Okay.
5 Mr. Sutton: So, we also make to make certain that Margaux takes this
6 opportunity — you guys did a good job of flagging these emails, now
7 this other one. Anything else come out at you that kind of gave you
8 cause for concern that you didn't understand?
9 Ms. West: No, not with regards to Ms. Kelly, no.
10 Mr. Sutton: Okay.
11 Ms. West: Huh-uh. There's plenty of things that don't quite make sense. The
12 party was the biggest thing. It was really weird that it was these
13 people getting together just a day after and it was just an odd
14 compilation of people, so that was difficult for us to understand, and
15 then when you forwarded that email to Catherine and Ariel, it was
16 like why those two and, you know, there's just so many pieces in
17 these emails that just don't fit together really well. So, that's why
18 the interviews are so important to try and understand what was
19 going on at the time.
20 Mr. Myers: Okay.
21 Mr. Sutton: Can I talk to you guys for two minutes? Can I walk Margaux out?
22 Ms. West: Sure.
23 Mr. Sutton: Okay.
24 Mr. Myers: Sure.
25 Ms. West: Thank you very much.
26 Ms. Kelly: Thank you.
27 Mr. Myers: Thank you. So, I can complete this too. It's 3:30 p.m. (Recording
28 Ends)

- INTERVIEW CONCLUDED -

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- INTERVIEW -

1
2 Mr. Myers: Start by giving the time, which October 4, or -- yeah, 4th, excuse
3 me, at 11:35. And if you could just say your name for the
4 recording.
5 Mr. Helfand: My name is Jack Helfand.
6 Mr. Myers: I'm Lee Myers at FPPC.
7 Ms. West: Galina West at FPPC.
8 Mr. Myers: Okay. Anyway, I'm sorry, so how long have you been working
9 here, sir?
10 Mr. Helfand: Please call me Jack. I've been here since last year.
11 Mr. Myers: Last year.
12 Ms. West: What's the name of the -- I saw the window. What's the name of
13 the business? I didn't catch it.
14 Mr. Helfand: Vanish Point Capital.
15 Ms. West: Vanish Point. Okay.
16 Mr. Myers: And what do your job duties entail here?
17 Mr. Helfand: I'm an attorney.
18 Mr. Myers: You're an attorney.
19 Ms. West: Okay.
20 Mr. Myers: And have you ever had anything to do with San Francisco politics
21 before?
22 Mr. Helfand: Never.
23 Mr. Myers: Never. So the 2010 was first the venture into that?
24 Mr. Helfand: First and only.
25 Mr. Myers: First and only. All right. We get that a lot. Well, anyway, do you
26 know Mark Farrell personally?
27 Mr. Helfand: I was his supervisor at Wilson Sonsini.
28 Mr. Myers: Oh, okay. And if we can start, how did it come to be that you

became involved with (inaudible) voters? Did somebody approach about that, or felt like you wanted -- you could do something for Mark?

Mr. Helfand: How did it come to be, I think that I was trying to encourage people to support Mark who were sort of outside of San Francisco, you know, sort of people we had worked with and stuff like that, and just in sort of like, you know, hey, you should support Mark, you know, he's running for San Francisco Supervisor. People were coming back and, you know, I think indicating that there were limits on the amount of -- so we said, well, we'll look into see whether or not there's anything that can be done. So we set up our own group, which is basically how that came to be in existence.

Ms. West: When you say we, who do you mean?

Mr. Helfand: Me and the -- I mean there wasn't really anyone else in it, except there was some people working for me in it that -- give me a second, the county firm's name is Steve Leibe, does that sound right?

Ms. West: Okay. Harry, Harry Leibe, is that right?

Mr. Helfand: Harry Leibe. Well, whatever. It's in my --

Ms. West: Yeah, yeah.

Mr. Helfand: -- email, so I don't even want to guess. You know, they were involved in the actual filing of the paperwork with me.

Ms. West: Okay. And you were the only one that was maybe the strategist or the --

Mr. Helfand: I mean that is a huge overstatement, you know. In fact, you know, I didn't think it would even amount to anything quite honestly when we started.

Ms. West: But deciding who spent the money that would be you, because they

1 were your bookkeepers, right?

2 Mr. Helfand: Well, I don't know exactly how the arrangements worked. My
3 understanding was that the treasurer actually had authority with
4 respect to the committee but, you know, I certainly was, you know,
5 involved in it.

6 Ms. West: Okay. So who made the decisions on expenditures?

7 Mr. Helfand: I certain was in -- I certainly was involved. I mean, you know, they
8 actually had the money.

9 Ms. West: Right.

10 Mr. Helfand: Money went into them. I never touched it. If they would say to me,
11 you know, could we pay this invoice, I would say, sure.

12 Ms. West: Okay. But who would negotiate the contract with the vendor so that
13 the invoice would come to them?

14 Mr. Helfand: I don't think that there were any like engagement letters or anything
15 like that.

16 Ms. West: Okay. But if you were to do a mailer say, who would actually --

17 Mr. Helfand: They would receive the invoice direct at the --

18 Ms. West: Right, but who would set up the mailer and decide what it was
19 going to say, and who it was going to go to?

20 Mr. Helfand: Who would set up the mailer, whoever was contracted to do -- I
21 mean I certainly don't know who actually produced the mailer, like
22 what printing company, if that's the question.

23 Ms. West: Yeah. I'm trying to figure out who would hire the printing company.

24 Mr. Helfand: It would have been probably the person who was sort of helping us
25 come up with the strategy for, you know, what kind of messaging to
26 put out and stuff like that.

27 Ms. West: So who would that be?

28 Mr. Helfand: Well, I kind of expected you guys to have --

1 Ms. West: Okay.

2 Mr. Helfand: -- more information than me.

3 Ms. West: Okay. I'm just trying to figure it out.

4 Mr. Helfand: But I'm happy -- I'm sure I can figure out the name of the guy if you
5 give me a moment.

6 Ms. West: Okay. Sure.

7 Mr. Helfand: I mean, you know, you're talking about two years ago.

8 Ms. West: Totally understand.

9 Mr. Myers: Sure.

10 Ms. West: I'm sorry, this --

11 Mr. Helfand: You guys clearly must know who the --

12 Ms. West: Right.

13 Mr. Helfand: -- consultant was. Who is that?

14 Ms. West: I know who the consultant was, Richard Schlackman.

15 Mr. Helfand: Yeah.

16 Ms. West: Right.

17 Mr. Helfand: He would have been the person who would have -- I asked you --
18 Yes.

19 Ms. West: That's why I was trying to make sure I understand. It was Richard
20 Schlackman that, like say you would do fundraising, and then he
21 would decide the expenditures?

22 Mr. Helfand: Yeah. I mean I wasn't dealing with the vendors, yes.

23 Ms. West: Okay. Because each committee works differently, so those
24 questions are just kind of trying to flush out how your committee
25 actually worked.

26 Mr. Helfand: Yeah, Rich Schlackman would have been the person who picked
27 out, who printed it, and he who would have told them to invoice the
28 accounts directly.

1 Ms. West: Okay. Well, I think Lee's going to go through the emails with you.
2 Mr. Myers: Yeah, we'll go through the emails.
3 Ms. West: I was just trying get the, you know --
4 Mr. Helfand: I was just trying to figure out the name.
5 Ms. West: No problem. I was just trying to figure out, you know, who was
6 making the decisions for the committee, since you were principle
7 officer, so I was trying to see if there was someone else that was --
8 Mr. Helfand: That's entirely glorified, but okay.
9 Ms. West: We like to give people titles.
10 Mr. Myers: All right. So the first one on the --
11 Mr. Helfand: Sure.
12 Mr. Myers: -- Exhibit 1 --
13 Mr. Helfand: Yeah.
14 Mr. Myers: [REDACTED]
15 [REDACTED] Who's Chris, if you
16 remember?
17 Mr. Helfand: Chris, I don't have a last name for you.
18 Mr. Myers: Okay. So on Exhibit 2 --
19 Mr. Helfand: Yeah.
20 Mr. Myers: [REDACTED] So that's probably
21 the Chris that Mark was --
22 Mr. Helfand: Okay.
23 Mr. Myers: Okay. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 Mr. Helfand: Okay.
27 Mr. Myers: Did you ask Mark basically how you could go about helping him? Is
28 that how -- and he --

1 Mr. Helfand: No.

2 Mr. Myers: -- (inaudible).

3 Mr. Helfand: No, no. In fact, I think that this certainly wasn't requested by me at
4 anytime. No, I mean I don't recall asking anybody for any help with
5 this.

6 Ms. West: Okay. We talked to Chris, and he was saying that you contacted
7 him and asked him for assistance. Does that sound familiar?

8 Mr. Helfand: It doesn't.

9 Ms. West: Okay. Do you remember speaking to him?

10 Mr. Helfand: No, I really don't. But it looks like I got an email from him.

11 Ms. West: Do you know he worked for the Mark Farrell campaign?

12 Mr. Helfand: I don't think that at this time we had done anything in terms of
13 setting up the independent expenditure committee. But you guys
14 would probably have the timing better than me. There was --

15 Ms. West: I believe this was right before.

16 Mr. Helfand: Was it right before? What date? Do you know what date the
17 expenditure committee got called?

18 Ms. West: Do you have the date?

19 Mr. Myers: It was I think the second week of September.

20 Mr. Helfand: Okay. And so to answer your question, no, I don't remember
21 reaching out to anybody.

22 Ms. West: And you didn't have any discussions with Mark about letting him
23 know you were going to do something to try and help him, separate
24 from his campaign?

25 Mr. Helfand: I might have said something to the extent, I might work on this
26 separately from you, but nothing like, hey, you know, I'm going to
27 coordinate anything for you, or anything like that.

28 Ms. West: Right.

1 Mr. Helfand: No, certainly not.

2 Ms. West: Right. I would hope not.

3 Mr. Myers: All right. So the third exhibit, [REDACTED]

4 [REDACTED] Okay. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] Did you ever reach out to Ren

14 Riley?

15 Mr. Helfand: Yeah, I did. I did, and I think I completed Ren -- so my

16 understanding is that Ren didn't participate, and that Ren was part

17 of the group of eight to ten people who we went out to try to get

18 help with. So I definitely reached out to Ren, you know. I

19 obviously, you know, didn't know anything about this

20 communication.

21 Mr. Myers: But Mark knew that you were going around reaching out to people

22 though?

23 Mr. Helfand: I'm sure that he was aware that there was -- I mean this is

24 September 7th, the day -- let me see if I can -- so this -- okay. Is

25 this the 9th, or the 7th? Oh, I see, you Ren wrote (inaudible).

26 Mr. Myers: Yeah, he wrote back (inaudible).

27 Mr. Helfand: No, (inaudible).

28 Ms. West: Did you get Ren's name from Mark as someone --

1 Mr. Helfand: No.

2 Ms. West: -- to possibly reach out to?

3 Mr. Helfand: No, Ren's at a company like my own in Palo Alto.

4 Mr. Myers: On Exhibit 4, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] What was the list, do you recall?

10 Mr. Helfand: I think that that was just a list of friends of Mark that they thought

11 were friends of mine that I'd be able to talk to.

12 Ms. West: Do you recall if this was about your (inaudible) communication with

13 Chris Lee, or how many times that --

14 Mr. Helfand: I can't ever remember talking to Chris Lee. I mean I see the email.

15 This was before, you know, we started the committee and, you

16 know, I might have put in -- honestly, I can't recall, but I might have

17 said like, do you have somebody's email, or somebody's address,

18 or something like that.

19 Mr. Myers: And he says, we have a consultant on board, almost as if he picked

20 the consultant for you.

21 Mr. Helfand: Hmm. I don't take that from the email, but --

22 Ms. West: What do you think it means?

23 Mr. Helfand: I don't know. I've never ever met with any of the consultants.

24 Ms. West: So a consultant he's referring to wouldn't be Rich Schlackman?

25 Mr. Helfand: It could be. I don't know. I never met with one, and I never heard

26 anything from Chris Lee in terms of who their consultant would be.

27 Ms. West: Can you go through this, how Rich Schlackman got hired for the

28 committee?

1 Mr. Helfand: You know, I really don't know. I can't recall.

2 Ms. West: Okay. Did you have his phone number and possibly contact him?

3 Mr. Helfand: I mean my best recollection is that when I started to do this I started
4 talking to some lawyers in San Francisco, and was basically
5 collecting names of people who could serve as an accountant, who
6 could serve as a consultant, who might be able to make the, you
7 know, mailings and that kind of thing.

8 Ms. West: Okay. And you probably got his name that way?

9 Mr. Helfand: I don't -- I mean honestly, I can't recall exactly. I just remember
10 how this process started was me trying to educate myself on what it
11 was that I was doing.

12 Ms. West: Yeah, there's a lot of rules. So when he sends you this -- when
13 Chris Lee sends you this email saying that the consultant has been
14 pegged, was this surprising to you that --

15 Mr. Helfand: I don't think that --

16 Ms. West: -- they would --

17 Mr. Helfand: Hold on, let's just make sure that we're being clear. I think the
18 email says we have a consultant on board that you will need to
19 meet with.

20 Ms. West: Yes. Do you think you met with this person?

21 Mr. Helfand: I did not meet anybody.

22 Ms. West: Okay.

23 Mr. Helfand: I never met with any person to do with this committee the entire,
24 you know, eight weeks that we were involved in it.

25 Ms. West: Okay. And then he says he has to step out of the picture, and
26 please give him a call. Do you know if you gave him a call?

27 Mr. Helfand: I certainly -- it was in conversation with please give me a call.

28 Ms. West: And then you say I will call you tomorrow morning.

1 Mr. Helfand: Oh, you're saying did I --
2 Ms. West: Did you call him?
3 Mr. Helfand: I'm sorry, I thought you meant Schlackman.
4 Ms. West: (Inaudible).
5 Mr. Helfand: So I definitely spoke with Schlackman. I may very well have
6 followed up with Chris.
7 Ms. West: Okay. And you don't recall that conversation?
8 Mr. Helfand: For sure not.
9 Ms. West: Okay. He says he had you call him in order to tell you never to call
10 him. Does that sound familiar?
11 Mr. Helfand: It doesn't. I don't remember the call. I'm not going to try and --
12 Ms. West: Okay.
13 Mr. Helfand: I mean to --
14 Ms. West: I'm just that --
15 Mr. Helfand: -- facture anything, I mean honestly --
16 Ms. West: Just seeing if you were following the same (inaudible).
17 Mr. Helfand: Put it this way, had he put it that way, I would have remembered.
18 Ms. West: Yeah, that seemed memorable to me as well.
19 Mr. Helfand: I think he may very well, if we spoke, said to me something to the
20 effect of we can't communication -- we can't have communications
21 or something. That's entirely possible. It seems incredibly unlikely
22 that he said to me don't ever call me.
23 Ms. West: Yeah, yeah. That seemed unlikely to me as well when I was talking
24 to him.
25 Mr. Helfand: Okay.
26 Mr. Myers: Okay. On Exhibit 5, [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Mr. Helfand: Okay.
4 Mr. Myers: So he introduced you to Schlackman, did you --
5 Mr. Helfand: I don't know that he was the person that introduced me, but that's --
6 I mean I'm happy to answer any questions for you guys, but --
7 Ms. West: Right.
8 Mr. Helfand: -- please don't put words in my mouth, I mean --
9 Ms. West: No.
10 Mr. Helfand: -- you're asking me about emails that somebody else sent to me.
11 My recollection of Rick Schlackman becoming involved was not
12 because Chris Lee or anyone else said, you know, hire this person.
13 Ms. West: Okay.
14 Mr. Helfand: So that's my --
15 Mr. Myers: On Exhibit 6, [REDACTED] Who was Natalie
16 LeBlanc?
17 Mr. Helfand: I think that she worked for Rick Schlackman or something to that
18 effect.
19 Mr. Myers: Okay.
20 Mr. Helfand: MSHC partners.
21 Mr. Myers: Okay.
22 Mr. Helfand: Yeah, I think that -- well, she's in -- yeah, yeah. I think that she's
23 Schlackman's partner, I'm pretty sure.
24 Mr. Myers: [REDACTED] I'm just curious,
25 you guys ended up going, what was it, yes on Farrell or something?
26 You dropped the Nolan Riley as I recall.
27 Mr. Helfand: Yeah, I mean I think we were just playing with names at this point.
28 Mr. Myers: Just playing with names at that point.

1 Mr. Helfand: You know, doing our best to try and fit within the -- San Francisco's
2 got a bunch of guidelines around that and stuff, so (inaudible).
3 Ms. West: So would it be fair to say that you were working with Natalie and
4 Richard and --
5 Mr. Helfand: Oh, yeah.
6 Ms. West: -- for the committee, and trying to figure out what you needed to
7 do?
8 Mr. Helfand: Totally.
9 Ms. West: And activities?
10 Mr. Helfand: Yeah.
11 Ms. West: Okay.
12 Mr. Myers: Okay.
13 Ms. West: Who was in charge of fundraising for the committee?
14 Mr. Helfand: Well, I mean it was, you know, its success belies its humble
15 beginnings, I mean it really started as a group of, you know, people
16 who believed in Mark sort of, you know, throwing into the hat. In
17 terms of like, you know, a sort of legal, you know, filing, I think that
18 people would say, since I was the one that filed it, I was like the
19 final, you know, committee, you know. In practice, I'm a complete
20 political novice, and when somebody was, for example, coming up
21 with a committee name, or a political message, I mean, you know,
22 to the extent that I could, I tried to show deference to people who
23 had expertise.
24 Ms. West: And you didn't get paid for this position or anything, right? It was
25 volunteer?
26 Mr. Helfand: Now you're bringing up a very, very sore spot. No, it was
27 completely voluntary.
28 Ms. West: Sorry.

1 Mr. Helfand: No compensation. Actually, to be entirely accurate about that, at
2 the end, shutting down of the fund, there was approximately like
3 \$2,600 left or something like that, and my charge that -- I approved
4 an expense to cover legal cost. It actually had to do with the San
5 Francisco --
6 Ms. West: They fined, right?
7 Mr. Helfand: Yeah.
8 Ms. West: They did a settlement with you or something?
9 Mr. Helfand: They did. They did. So it was, excuse my language, but it was
10 pretty BS. The complaint came from Janet Riley's campaign, filed
11 a letter with your office and with San Francisco. Yours is the one I
12 think that we're following up on today, that the one in San Francisco
13 was an objection to the disclaimer at the bottom of one of the
14 postcards, which was totally illegitimate. I mean substantively we
15 had all of the information that was required by the law, but we didn't
16 use the exact San Francisco language.
17 Ms. West: Oh.
18 Mr. Helfand: So we ended up saying, fine, we're not going to, you know, be in a
19 fight over this, but honestly I felt like that was very, you know,
20 improper. So there was a little bit of legal time that I did negotiate
21 with San Francisco, which I compensated myself for.
22 Ms. West: Yeah, we have the same thing with Slate Mailer Organization.
23 They have specific language they have to use.
24 Mr. Helfand: Honestly, I think it violates Citizens United, but it's a different
25 conversation of course, another time.
26 Mr. Myers: Citizens United. On Exhibit 7, [REDACTED]
27 [REDACTED]
28 Mr. Helfand: Yeah, yeah, this I recognize.

1 Mr. Myers: The same. And those were some --
2 Mr. Helfand: And this right here, the Sutton Law Firm, you know, I think I made
3 reference to the fact of when we were first setting up the
4 committee, you know, we had talked with some lawyers and stuff.
5 This was the law firm that we talked to. Ultimately we ended up not
6 using that law firm.
7 Ms. West: Okay. So they just helped you initially?
8 Mr. Helfand: Yeah, and I'd just point out to you, so when monies were sent to
9 this address, they were then forwarded on to the accounting firm.
10 Ms. West: Okay.
11 Mr. Myers: Okay. That clears up that.
12 Ms. West: What is this, is this a fundraising thing?
13 Mr. Myers: Yeah. And these names are the ones that were brought up by
14 Chris Lee on that list?
15 Mr. Helfand: You said that, not me. No, this list is basically people that I know.
16 There's no person on this list that I didn't know, I don't think, going
17 into this. I mean obviously Schlackman and Natalie were blocked.
18 Those were totally new people that just came on.
19 Mr. Myers: Okay.
20 Mr. Helfand: And I'm sure you guys are seeing this, and we were not, at least
21 from our side of the committee, you know, we were doing our
22 damndest not to have any contact with them at all. In fact, from the
23 date that I started that committee, until well after he had been
24 elected, you know, I personally never had any communications with
25 anybody at the campaign that I was aware of. And I tried, as you
26 can see, to, you know, even anybody we approached to let them
27 know, you know, what we're doing here is not the campaign.
28 Ms. West: Yeah, I think the questions are coming off with the wrong tone. I

1 think what I was trying to ask is if you felt that Chris Lee was trying
2 to influence your committee.

3 Mr. Helfand: I'm such a big -- I'm a big boy. Honestly, you know, I don't put any
4 stock at all into -- Chris Lee had no effect on me. I mean I wasn't
5 doing what Chris Lee wanted. Obviously I wasn't committing
6 myself to this to, you know, help Chris Lee or to do his bidding.

7 Ms. West: But he was contacting you?

8 Mr. Helfand: You know, I think that there was an exchange of the emails that you
9 saw, head of the committee. I mean, you know, I don't the ins and
10 outs of these laws, but I'm perfectly aware that like for example
11 people in the current presidential election have set up expenditure
12 campaigns the day after they terminate employment from the
13 campaign.

14 Ms. West: So true.

15 Mr. Helfand: So I mean I don't -- I can't tell you with like any sort of legal
16 specificity, but as soon as I made the decision to start this thing,
17 and went forward with it, I mean it was, at least on my part,
18 absolutely zero.

19 Ms. West: Right.

20 Mr. Helfand: And tried to communicate the same thing by --

21 Ms. West: Yeah, your part was not what my questions were trying to get
22 towards.

23 Mr. Helfand: I mean I can't -- honestly, I can't throw Chris in the grease, just
24 mostly because I don't know the guy.

25 Ms. West: Right.

26 Mr. Helfand: I don't really remember having any communications, and he
27 certainly wasn't driving the committee in any way.

28 Ms. West: Okay. Go.

1 Mr. Myers: We'll move forward on Exhibit 8. So then just like you said, I mean
2 it does look like you went out of your way to make sure that
3 everybody knows not to have --

4 Mr. Helfand: Yeah.

5 Mr. Myers: -- you know, that they cannot --

6 Mr. Helfand: I mean I don't want to get in trouble.

7 Mr. Myers: Yeah.

8 Ms. West: Yeah.

9 Mr. Myers: No, that's all up and up right there.

10 Ms. West: So what does this one say? Are you telling Ren not to
11 communicate with the committee?

12 Mr. Myers: Yeah.

13 Mr. Helfand: What's that?

14 Ms. West: It looks like you're telling Ren not to communicate with Mark's
15 committee.

16 Mr. Helfand: Yeah, well, it looks like he sent me an email, and then 20 minutes
17 later I sent him an email, don't do that.

18 Ms. West: Is this October? Yeah.

19 Mr. Myers: Yeah. So Exhibit 9, [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 Mr. Helfand: Okay.

1 Mr. Myers: Did he ever tell you how he knew that there was going to be a
2 major contribution?
3 Mr. Helfand: No, but, you know, as I indicated before, I mean this whole episode
4 started like it was going to be, you know, an effort to raise a
5 relatively small amount of money that would have just sent out.
6 And then I think two fairly well to do San Franciscans -- wait a
7 second --
8 Ms. West: I think we know.
9 Mr. Helfand: Deanna Wilsey.
10 Ms. West: Yeah, Wilsey, and --
11 Mr. Myers: I think it was Debbie, right, is that her name, Debbie?
12 Ms. West: I don't know.
13 Mr. Helfand: Something like that.
14 Mr. Myers: Dede or a Debbie, I don't know.
15 Mr. Helfand: And then a real estate investor. These are not the people I run
16 with, but --
17 Ms. West: What was his name?
18 Mr. Helfand: He was the one that made the big investment that --
19 Ms. West: That was the guy, Cotes.
20 Mr. Helfand: Is it Coens, Cotes. Yes, Cotes.
21 Ms. West: Yes.
22 Mr. Helfand: So those people -- I mean for sure when we started the committee,
23 we --
24 Mr. Myers: Yeah.
25 Mr. Helfand: -- did not expect people to, you know, sort of --
26 Mr. Myers: It was kind of more like a grassroots thing for --
27 Mr. Helfand: Yeah.
28 Mr. Myers: -- the people who knew Mark.

1 Mr. Helfand: And then, you know, basically they said, you know, I think that
2 there's -- I think we might have heard something like, you know,
3 people are happy to see you're, you know, you're out there fighting
4 the fight, and there may be some support. And I think that Rich
5 would have been the person more -- for sure more knowledgeable
6 about me than Cotes and, is it Deanna Wilsey? This is --
7 Mr. Myers: I thought it was Debbie.
8 Mr. Helfand: Okay.
9 Mr. Myers: But I'm not totally 100 percent on that either.
10 Mr. Helfand: Ms. Wilsey, she actually called me, inbound call to me, and I think
11 she was just mostly making sure that I was a trustworthy guy before
12 she cut a big check.
13 Ms. West: Oh, because you didn't know her before?
14 Mr. Helfand: I did not know her. I mean I only knew her because she was like
15 some huge museum benefactor in San Francisco. Like I think that
16 she led the fundraising for the De Young Museum.
17 Ms. West: Wow. So did she say --
18 Mr. Helfand: (Inaudible) right now.
19 Ms. West: -- who told her about the committee, or how she got the --
20 Mr. Helfand: Well, we were in the newspaper.
21 Ms. West: Okay.
22 Mr. Helfand: We were in the newspaper.
23 Ms. West: So she didn't say anything about --
24 Mr. Helfand: No.
25 Ms. West: -- (inaudible)?
26 Mr. Helfand: No. She didn't say very much of anything, just, you know, wanted
27 to know who I was and what I was doing.
28 Ms. West: That you're an outstanding guy. How about Cotes, did you ever

1 speak to him?

2 Mr. Helfand: I did not speak with Cotes when he was giving us the money, and
3 never spoke with anybody from his office at all.

4 Ms. West: Okay. Do you know whose contribution Schlackman was referring
5 to on this?

6 Mr. Helfand: I think the only six -- you know, you guys have this at your
7 fingertips, but I think the only six figure check we got was from
8 Cotes.

9 Ms. West: Okay.

10 Mr. Helfand: So I'm guessing that's what he was referring to.

11 Mr. Myers: Okay. I think Exhibit 10 [REDACTED]
12 [REDACTED]

13 Mr. Helfand: Okay.

14 Ms. West: Sorry, I haven't seen where these are at. I'm jumping all around.

15 Mr. Myers: No, no, that is a good (Inaudible). And so finally the number 11 --

16 Mr. Helfand: Okay.

17 Mr. Myers: -- Exhibit 11, [REDACTED] Do you know
18 David?

19 Mr. Helfand: Artisan Capital I know. David Lamond, I think David Lamond is an
20 investor at Artisan Capital.

21 Mr. Myers: Okay.

22 Mr. Helfand: I know Artisan Capital, and David is not a personal friend, but
23 maybe somebody whose name I knew about before the committee,
24 but no personal relation.

25 Mr. Myers: Okay. [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 Mr. Helfand: Okay.

3 Mr. Myers: [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 Mr. Helfand: Okay.

8 Mr. Myers: Do you remember --

9 Mr. Helfand: For sure I don't know anything about this, no.

10 Mr. Myers: Okay.

11 Ms. West: Did Chris forward --

12 Mr. Helfand: I don't even know if David Lamond gave me money.

13 Ms. West: Okay.

14 Mr. Myers: Yeah.

15 Mr. Helfand: Did David Lamond give me money?

16 Mr. Myers: You know, I haven't done research on it.

17 Mr. Helfand: Okay. Yeah, I mean for sure I never talked to the guy. I never
18 talked to anybody about it.

19 Ms. West: How early was this?

20 Mr. Myers: This one is --

21 Ms. West: In September. So it was right when the committee was forming
22 when it first was --

23 Mr. Helfand: Yeah, it sounds like when he's saying he's making a contribution,
24 he's saying he made the contribution to --

25 Ms. West: Mark Farrell.

26 Mr. Helfand: -- to Mark Farrell, and then maybe he was wanting to get more. I
27 mean I'm totally speculating. I've never seen his emails.

28 Mr. Myer: Sure.

1 Mr. Helfand: In fact, I'm going back to other email. Let me look and see if
2 Lamond was on this.

3 Ms. West: (Inaudible).

4 Mr. Myers: Yeah.

5 Mr. Helfand: No, I mean he would not have been one of the people that I went
6 out to on October 1st. So I'm thinking that he didn't exist, because
7 had he existed, he would have been on --

8 Ms. West: He would have been on that --

9 Mr. Myers: Sure, sure.

10 Mr. Helfand: -- October.

11 Ms. West: Okay. In the conversations with Schlackman or his associate,
12 Natalie LaBlanc, did the name Supervisor Alioto-Pier come up as
13 someone that was helping with the committee?

14 Mr. Helfand: Wasn't she the person he was running for her.

15 Ms. West: Her (inaudible).

16 Mr. Helfand: She was terming out.

17 Ms. West: Yeah.

18 Mr. Helfand: I don't recall anything about her working for the campaign. I mean I
19 think her name was sort of part of the -- you know, she was sort of
20 the current office sitter, and I think maybe she had given Mark her
21 endorsement.

22 Ms. West: Right. So you never met with her?

23 Mr. Helfand: No.

24 Ms. West: Okay. Or her people I think would be, who was it, Catherine
25 Stefani.

26 Mr. Myers: Yeah, Catherine.

27 Ms. West: Do you know her at all?

28 Mr. Myers: (Inaudible) Stefani.

1 Ms. West: Or Bill Morris.
2 Mr. Myers: Yeah.
3 Ms. West: Okay.
4 Mr. Helfand: I mean, guys, and it's fine. I'm happy to help, but I just, you know --
5 this really started as, you know, half a dozen guys throwing money
6 in the hat, and the only reason that it came to anybody's attention is
7 because Debbie or Deanna Wilsey, and Cotes put in so much
8 money that it --
9 Ms. West: Right. And so just -- not to be redundant, but an expenditure is
10 made from the committee, you would work with Rick Schlackman
11 and his group, or his employees, and that's how the decisions for
12 the committee were made for expenditures? Would that be
13 correct?
14 Mr. Helfand: No, I thought you were saying before would they have come to me
15 with an in -- like let's say for example that we made the decision to
16 send out 10,000 mailers or something like that, I would not have
17 gotten in any way involved in this is the right people to do the
18 printing, this is the right people to do the mailing, or anything like
19 that.
20 Ms. West: Right.
21 Mr. Helfand: That would have been completely handled by the consultants.
22 Where I would have had anything to do in the loop, and this wasn't
23 in every case, but it did happen to my recollection is I would get a
24 proof of like the distribution that was going on. I think, you know,
25 three or four different times I may have had a comment, or a typo,
26 on like one of them in terms of from a contents standpoint. And
27 then it got distributed, invoice would send to the accounting firm,
28 and they would say we got the invoice for the, you know, 10,000

1 mailer, you know, can I pay this, it's \$16,000?

2 Ms. West: Sure.

3 Mr. Helfand: Okay. Yeah. I mean I did not run this like a business by any
4 means. I mean I thought I was just expressing my free speech.

5 Ms. West: Oh, yeah.

6 Mr. Myers: Yeah.

7 Ms. West: Well, so who would come up with the draft and the mailer and send
8 it to you?

9 Mr. Helfand: It would have been the consultants, yeah.

10 Ms. West: Okay. And so who would decide to send the mailer? Like who
11 would decide, hey -- because I think this committee as a whole did
12 mostly mailers, I think, with the money. That would be --

13 Mr. Helfand: I mean I would refer you to the expenditures. I think that there were
14 other expenditures other than --

15 Mr. Myers: Yeah, there's a Facebook page.

16 Mr. Helfand: Yeah, yeah.

17 Ms. West: Right.

18 Mr. Helfand: There was some email.

19 Ms. West: There's electronic.

20 Mr. Myers: All electronic stuff, yeah.

21 Ms. West: Stuff.

22 Mr. Helfand: Okay.

23 Ms. West: Who decided that's what the strategy was going to be for the
24 committee?

25 Mr. Helfand: The consultants.

26 Ms. West: Okay.

27 Mr. Helfand: Yeah. I mean I wasn't in there saying like 18 percent needs to be
28 on internet, you know.

1 Ms. West: Yeah.

2 Mr. Helfand: Twelve needs to be on -- yeah, I mean --

3 Ms. West: And then they would come up with a text, and then you would just
4 kind of say, yeah, that looks great?

5 Mr. Helfand: Exactly.

6 Ms. West: Okay. Was there anyone else involved besides Rick Schlackman
7 and his company?

8 Mr. Helfand: Certainly nobody else I dealt with. I mean I certainly got the
9 impression that there were, you know, other people doing leg work,
10 and that, you know, worked at that company and stuff like that, you
11 know.

12 Ms. West: Okay.

13 Mr. Helfand: I might -- I'm sure that I produced an email, and they might have
14 said something to me like, oh, somebody, or so and so is
15 forwarding the next proof or something like that. But in terms of
16 the, you know, conversations to, you know, affect anything, would
17 have been Schlackman and Natalie from the sort of like design, you
18 know, mine sort of last and final approval on invoices, and the
19 treasurer, you know, basically handling all of the record keeping,
20 filing and that kind of thing.

21 Ms. West: Okay.

22 Mr. Helfand: That was kind of the division of labor.

23 Ms. West: And he never had a conversation with you, and you never heard
24 anything where he was getting input from other people as to how to
25 make those decisions for the committee?

26 Mr. Helfand: No. I mean he never said to me like, this is the person that Chris
27 Lee thinks you should hire or anything like that, no.

28 Ms. West: Right.

1 Mr. Helfand: Certainly not.

2 Ms. West: Right. Or this is the direction the committee should go in, or these
3 are the types of mailers we should send out?

4 Mr. Helfand: Well, he very well was -- I mean I don't own this business, the one
5 we're at here, but I'm able to influence its direction through my
6 actions. I mean he clearly was -- you know, he was given a
7 mission to come up with a, you know, a convincing, you know,
8 mailer, and I wasn't going to get in there and tell him to use a
9 different color and background.

10 Ms. West: Right.

11 Mr. Helfand: So I mean he was clearly, you know, shaping the message, if that's
12 --

13 Ms. West: Yeah, I think my question's more, did he ever give you the
14 impression, or you ever had a conversation with him where he was
15 saying, he was talking to someone else to make these decisions,
16 somebody else was giving him input to decide the course of --

17 Mr. Helfand: No, no.

18 Ms. West: Okay.

19 Mr. Helfand: I mean I think that I -- I'm totally -- the answer to your question is,
20 no, he certainly never had that conversation with me. Two, I would
21 expect him to be, you know, more --

22 Ms. West: More than (inaudible).

23 Mr. Helfand: I mean if he was saying to me, this is what the candidate's
24 committee wants you to put out in terms of message, I would have
25 fired him by myself.

26 Ms. West: Oh, that's good. All right. That helps me a lot. I really --

27 Mr. Helfand: Sure, yeah.

28 Ms. West: -- understand more of the workings of the committee. Did you have

any other questions?

Mr. Myers: No, I think we've hit on everything.

Ms. West: Okay.

Mr. Helfand: Awesome. Thank you guys for doing it quickly. Can I hang onto this?

Mr. Myers: It's up to you.

Ms. West: Actually, it's up to you.

Mr. Myers: It's up to me.

Ms. West: Can I conclude the interview?

Mr. Myers: Yes, I will conclude the interview.

Mr. Helfand: You have two copies, right? All right.

Mr. Myers: Yes.

Mr. Helfand: Signing off?

Mr. Myers: I'm signing off, 12:12.

Mr. Helfand: Thank you. (Recording Ends)

- INTERVIEW CONCLUDED -

Date		Description		Amount	
1890	Jan 1	Balance		100.00	
	Feb 1	Interest		5.00	
	Mar 1	Interest		5.00	
	Apr 1	Interest		5.00	
	May 1	Interest		5.00	
	Jun 1	Interest		5.00	
	Jul 1	Interest		5.00	
	Aug 1	Interest		5.00	
	Sep 1	Interest		5.00	
	Oct 1	Interest		5.00	
	Nov 1	Interest		5.00	
	Dec 1	Interest		5.00	
1891	Jan 1	Balance		100.00	
	Feb 1	Interest		5.00	
	Mar 1	Interest		5.00	
	Apr 1	Interest		5.00	
	May 1	Interest		5.00	
	Jun 1	Interest		5.00	
	Jul 1	Interest		5.00	
	Aug 1	Interest		5.00	
	Sep 1	Interest		5.00	
	Oct 1	Interest		5.00	
	Nov 1	Interest		5.00	
	Dec 1	Interest		5.00	
1892	Jan 1	Balance		100.00	
	Feb 1	Interest		5.00	
	Mar 1	Interest		5.00	
	Apr 1	Interest		5.00	
	May 1	Interest		5.00	
	Jun 1	Interest		5.00	
	Jul 1	Interest		5.00	
	Aug 1	Interest		5.00	
	Sep 1	Interest		5.00	
	Oct 1	Interest		5.00	
	Nov 1	Interest		5.00	
	Dec 1	Interest		5.00	
1893	Jan 1	Balance		100.00	
	Feb 1	Interest		5.00	
	Mar 1	Interest		5.00	
	Apr 1	Interest		5.00	
	May 1	Interest		5.00	
	Jun 1	Interest		5.00	
	Jul 1	Interest		5.00	
	Aug 1	Interest		5.00	
	Sep 1	Interest		5.00	
	Oct 1	Interest		5.00	
	Nov 1	Interest		5.00	
	Dec 1	Interest		5.00	

From: Matthew Alvarez
To: St. Croix, John; Argumedo, Catherine (ETH)
Cc: James Sutton
Subject: Letter to Chairperson Hur
Date: Tuesday, December 16, 2014 4:01:13 PM
Attachments: Hur Common Sense Voters Matter.pdf

Mr. St. Croix and Ms. Argumedo,

Attached please find a letter from Mr. Sutton addressed to Chairperson Hur regarding tonight's Commission meeting. Please confirm receipt of this letter.

Please let me know if you have any questions or concerns.

Thank you,

Matthew Alvarez
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108
malvarez@campaignlawyers.com
PH: 415/732-4502
FX: 415/732-7701

THIS E-MAIL IS CONFIDENTIAL AND MAY BE LEGALLY PRIVILEGED. IF YOU RECEIVE THIS E-MAIL IN ERROR PLEASE CONTACT US IMMEDIATELY AND THEN DELETE IT OR DESTROY IT. ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION IS NOT INTENDED TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING IRS PENALTIES OR FOR RECOMMENDING ANY TAX RELATED TRANSACTION OR MATTER TO A THIRD PARTY.



December 16, 2014

VIA E-MAIL ONLY

Benedict Hur, Esq.
Chairperson
San Francisco Ethics Commission
25 Van Ness Ave., Ste. 220
San Francisco, CA 94102

RE: Common Sense Voters Matter

Dear Chairperson Hur:

We represent Supervisor Mark Farrell and the Mark Farrell for District 2 Supervisor 2010 committee, and submit this letter in connection with your consideration of agenda item #3 involving the Common Sense Voters committee at your meeting this afternoon. We want to provide you with certain information which may not be contained in the FPPC stipulation with Common Sense Voters or other documents. Commission decisions have wide-ranging effects, and it is essential that the Commission receive a full picture of the record.

Most notably, Supervisor Farrell wanted us to emphasize that he takes compliance with all campaign and ethics laws very seriously, and that he has always required his campaign team and his City Hall staff to comply with both the letter and spirit of the City's campaign and ethics laws. As indicated in the FPPC stipulation (which is attached to the agenda), it was not until well after the 2010 election that Supervisor Farrell learned of the interactions between one of his former campaign consultants, Chris Lee, and the Common Sense Voters committee. In fact, it was the FPPC that first informed Supervisor Farrell of Mr. Lee's unauthorized actions. He was very upset to learn about Mr. Lee's actions, which were taken completely without his authorization and outside the scope of his duties as a campaign consultant for his 2010 committee.

Supervisor Farrell fully cooperated with the FPPC during the entire course of its entire 3+ year investigation. He and his campaign team provided dozens of e-mails to the FPPC, responded to numerous inquiries, and was interviewed at length by FPPC investigators. He of course will continue to cooperate with the Ethics Commission and City Attorney's office, and will provide you with any additional information which the Commission or City Attorney's office may need about his 2010 campaign.

Benedict Hur, Esq.
December 16, 2014
Page 2

The FPPC's investigation concluded that, before the Common Sense Voters committee was officially organized, Mr. Lee had inappropriate interactions with the committee's responsible officer and political consultant.

However, given that Mr. Lee's actions were not authorized by Supervisor Farrell, and were outside the scope of his consultant duties, the FPPC decided that the most appropriate resolution of the matter was the stipulation it reached with the culpable parties.

If you need any additional information from Supervisor Farrell, his campaign team or his 2010 Farrell committee, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "James R. Sutton /ic". The signature is written in a cursive style.

James R. Sutton

cc: Supervisor Mark Farrell
JRS/lc
#1440.03



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of February 23, 2015.

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

1. Budget/Staffing.

The budget proposal as adopted by the Commission is being submitted on February 23, 2015. The Mayor's proposed budget is scheduled to be released on June 1 and Board of Supervisor hearings on the budget will also be in June.

2. Investigation and enforcement program.

As of February 13, 2015, there were 17 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	10
Conflict of Interest	4
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	0
Sunshine Ordinance	3
TOTAL	17

Enforcement Summaries

1. On January 26, 2015, the Ethics Commission entered into a stipulated agreement with Emily Murase and Committee to Elect Emily Murase for SF School Board 2014. Ms. Murase admitted to committing two violations of San Francisco Campaign and Governmental Conduct Code section 1.161(a) and agreed to pay a penalty of \$1,000. A copy of the agreement is available on the Commission's website.

2. On January 26, 2015, the Ethics Commission entered into a stipulated agreement with Rodrigo Santos and Rodrigo Santos for San Francisco Community College Board 2014. Mr. Santos admitted to committing two violations of San Francisco Campaign and Governmental Conduct Code section 1.161(a)(1) and agreed to pay a penalty of \$1,500. A copy of the agreement is available on the Commission's website.

3. On January 26, 2015, the Ethics Commission entered into a stipulated agreement with Mark Murphy and Mark Murphy for School Board 2014. Mr. Murphy admitted to committing one violation of San Francisco Campaign and Governmental Conduct Code section 1.161(a) and agreed to pay a penalty of \$500. A copy of the agreement is available on the Commission's website.

4. On January 26, 2015, the Ethics Commission entered into a stipulated agreement with Hydra Mendoza and Hydra Mendoza for School Board 2014. Ms. Mendoza admitted to committing one violation of San Francisco Campaign and Governmental Conduct Code section 1.161(a)(1) and agreed to pay a penalty of \$750. A copy of the agreement is available on the Commission's website.

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline fell on February 2, 2015 for the Second Semi-annual statement, which covers the reporting period ending December 31, 2014. Staff has identified twenty-one committees who have not yet filed their required campaign statement. These filers have been contacted by phone of their filing obligations. Staff will send these filers a Non-Specific Written Notice. In the interim, staff receives and processes campaign statements for this and other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations. The next filing deadline falls on July 31, 2015 for the First Semi-Annual statement, which covers the reporting period ending June 30, 2015.

b. Collection of late filing fees and contribution forfeitures. In the fiscal year 2014 -2015, as of January 31, 2015, the Commission collected \$24,338 in late fees and forfeitures. As of January 31, 2015, the Commission's outstanding late fees and forfeitures were \$14,769, of which \$13,260 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR as of June 30, 2014:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	\$2,658.90	\$2,658.90	2,658.90
3	Chris Jackson For Community College Board	1347066	Chris Jackson	7/12/13	\$6,600.94	\$6,600.94	\$6,600.94
						TOTAL	\$13,260

4. Revenues report.

For fiscal year 2014-2015, the Commission was budgeted to generate \$70,000 in revenues. As of February 13, 2015, the Commission received \$128,926 or 184% of anticipated revenues for the year.

Source	Budgeted Amount FY 14-15	Receipts
Lobbyist Fees	\$37,000	\$80,000
Other Ethics General	\$1,000	\$8
Campaign Finance Fines	\$23,000	\$24,338
Campaign Consultant Fees	\$5,000	\$12,150
Lobbyist Fines	\$1,000	\$0
Statements of Economic Interests Fines	\$1,000	\$1,320
Other Ethics Fines	\$1,000	\$9,500
Campaign Consultant Fines	\$1,000	\$1,610
Unallocated	\$0	\$0
Total	\$70,000	\$128,926

5. Lobbyist program.

As of February 13, 2015, 123 individual lobbyists were registered with the Commission. Total revenues collected to date for the 2014-2015 fiscal year amount to \$80,000 in lobbyist registration fees. The filing deadline for the next lobbyist disclosure statement is March 16, 2015.

6. Campaign Consultant program.

As of February 6, 2015, 18 campaign consultants were registered with the Commission. \$12,150 in registration fees and \$1,610 in fines have been collected so far during the 2014-2015 fiscal year. The next campaign consultant quarterly report deadline is Monday, March 16, 2015, covering the reporting period from December 1, 2014 through February 28, 2015.

7. Statements of Economic Interests.

Instructions regarding the 2015 Form 700 filing requirements were sent to Department Heads and Filing Officers on January 22, 2015. A training for Filing Officers was held on February 4, and an additional training is scheduled for March 4, 2015.

At the August 18th, 2014 discussion of the 2013-2014 Civil Grand Jury report, the Commission expressed interest in pursuing "Recommendation 4," that Form 700s be formatted to allow the content of the forms to be searched. Staff indicated that it would be in the best interest to wait for the FPPC to define a statewide standard for the Form 700 data format before building a publicly accessible dataset and search site. At the time, the FPPC had informed staff that they might develop a format by the end of 2014. A state format has not been developed and staff does not anticipate that one will be developed soon. Thus, staff now recommends moving forward without a state format. Staff will start discussions with Netfile and will seek public input prior to implementation.

8. Outreach and Education.

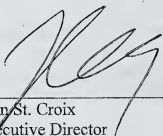
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requirements pertaining to general purpose committees (also referred to as political action committees). In addition, to the 14 scheduled training workshops, staff will schedule additional training and/or conduct one-on-one training as needed. Separately, on an on-going basis staff provides training to candidates and campaign treasurers on using the Commission's online electronic filing system, SFEDS.

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Respectfully submitted,



John St. Croix
Executive Director



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of February 23, 2015.

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

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COMMISSIONER

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- SIA Template Language Training

Respectfully submitted,



John St. Croix
Executive Director

[DRAFT]

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
February 23, 2015
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

GOVERNMENT
DOCUMENTS DEPT

MAR 20 2015

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I. Call to order and roll call.

Vice-Chairperson Renne called the meeting to order at 5:31 PM.

COMMISSION MEMBERS PRESENT: Paul Renne, Vice-Chairperson; Brett Andrews, Commissioner; Beverly Hayon, Commissioner; Peter Keane, Commissioner. Chairperson Hur was excused.

STAFF PRESENT: John St. Croix, Executive Director; Jesse Mainardi, Deputy Executive Director; Shaista Shaikh, Assistant Deputy Director; Steven Massey, Information Technology Officer; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney (DCA).

OTHERS PRESENT: Larry Bush; Anita Mayo, Pillsbury Winthrop Shaw Pittman; Robert van Ravenswaay; Kevin Heneghan; Michael Garcia; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Draft Report on San Francisco's Limited Public Financing Program – November 4, 2014 Board of Supervisors Election;
- Staff Memorandum re: Proposed Regulatory Change for Public Financing Submissions, dated February 18, 2015, including proposed amendment;
- Staff Memorandum re: Proposed Campaign Finance Reform Ordinance Amendments, dated February 18, 2015;
- Letter from Larry Bush for Friends of Ethics;
- E-mail, dated February 9, 2015, from Larry Bush for Friends of Ethics;
- E-mail, dated February 16, 2015, from Larry Bush;
- Letter from Anita Mayo, dated February 23, 2015, regarding potential amendments to Campaign Finance Reform Ordinance;
- Staff Memorandum re: Amendment Correction for the Campaign Finance Reform Ordinance, dated February 19, 2015;
- Letter from James R. Sutton, re: Common Sense Voters Matter, dated December 16, 2014;
- Letter from Charles H. Bell, Jr., re: Common Sense Voters, SF 2010, Mark Farrell for Supervisor 2010, dated December 18, 2014;
- Letter from Charles H. Bell, Jr., re: Common Sense Voters, SF 2010, Mark Farrell for Supervisor 2010, dated January 2, 2015;
- Draft Minutes of the Ethics Commission's Regular Meeting of January 26, 2015;

- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

III. Presentation by San Francisco State University students Kristen Wolslegel and Jeffrey Thorsby regarding their campaign finance data visualization project regarding the November 4, 2014 election.

Information Technology Officer Steven Massey introduced the San Francisco University students, Kristen Wolslegel and Jeffrey Thorsby, and provided a brief overview of their data visualization project. He stated that their work has been impressive and that the Commission is lucky to have had them.

Kristen Wolslegel and Jeffrey Thorsby led the Commission through their data visualization project that analyzed campaign finance data from the 2014 election cycle. Ms. Wolslegel stated that they were presenting a preview of the project and that the final version will be included on the Commission's website within a few weeks. Ms. Wolslegel and Mr. Thorsby presented six categories of information that they analyzed in their project: total contributions or contributor type, total campaign spending, expenditures on campaign consultants, lobbyist data – including a word cloud relating to the subject matter of each lobbyist contact, central county committee data, and the activity of political action committees and general purpose committees. Mr. Wolslegel and Mr. Thorsby created many different types of visualizations which allow a user to interact with the data.

The Commissioners were impressed with Mr. Wolslegel and Mr. Thorsby's work and thanked them for their work. Ms. Wolslegel noted that \$12 million was spent by committees on campaign consultant activity in 2014, whereas in previous years, committees spent on average of \$2-3 million. Mr. Thorsby stated that the campaign consultant data is manually entered and suggested electronic filing.

Public Comment:

Larry Bush had questions about "drilling down information." He asked whether standardizing categories of employment would make searches easier. He also asked whether the map could show where a donor lives. He also asked whether a donor is employed by a nonprofit.

IV. Discussion and possible action on public finance report.

Assistant Deputy Director Shaista Shaikh introduced the item and summarized the report. She stated that only two individuals qualified for public financing during the last election – both in District 10 – and that approximately \$195,000 had been distributed. Ms. Shaikh also briefly explained the threshold for receiving public financing from the Commission.

Public Comment:

None.

V. Discussion and possible action regarding a proposed amendment to Commission regulation 1.142-2, which would allow staff to implement an electronic filing system for candidates participating in the City's public financing program.

Deputy Executive Director Mainardi introduced the item. He stated that the proposed regulation would allow staff to accept filings for the public financing program electronically through NetFile. Information Technology Officer Massey stated that all of the qualifying forms and various administrative forms would be instantly posted on the Commission's website and the amendment would increase efficiency.

Public Comment:

None.

Motion 15-02-23-01 (Hayon/Keane): Moved, seconded and passed (4-0; Hur excused) that the Ethics Commission approve the proposed language in Regulation 1.142-2.

VI. Discussion and possible regarding potential additional amendments to the San Francisco Campaign Finance Reform Ordinance.

Deputy Executive Director Mainardi introduced the item and briefly outlined the proposals in staff's memorandum. The Commission decided to discuss each of the six proposals separately.

1. Contribution limits and bans for candidate-controlled ballot measure and/or general purpose committees.

Commissioner Keane stated that this proposal had a great deal of merit and the Commission should go forward on it. He stated that the item should be on the November 2015 ballot. DCA Shen noted that, as the Commission would be proposing additional limits on contributions, the amendments would need to be substantiated by a legislative record. He also noted that the legislative record would need to be built prior to reaching the step of placing something on the ballot. Vice-Chairperson Renne asked staff to draft proposed language in order to discuss it at the Commission's next meeting.

Public Comment:

Larry Bush stated that establishing a record was critical, including interested persons' meetings and additional Commission meetings. He stated that it made sense to put this item on the ballot.

Anita Mayo distributed a letter to the Commissioners and stated that the amendments could raise constitutional issues, as an ordinance limiting ballot measure committees could have First Amendment implications. She stated that contributors are already identified in public filings.

Robert van Ravenswaay agreed with staff's point to build a record. He stated that the Commission may wish to seek legal briefing regarding possible legal challenges.

Motion 15-02-23-02 (Keane/Hayon): Moved and seconded that the Ethics Commission go forward and hold the necessary IP meetings that staff determines are necessary to build a record relating to this and that the Commission discuss the matter at its next meeting.

Commissioner Andrews expressed concerns about the Commission's ability to place something on the November ballot. He stated that the Commission needs to do its due diligence and to make sure it has all of the necessary information in the record. Vice-Chairperson Renne agreed that the matter may not be ready for the November 2015 ballot. Commissioner Keane agreed that it is better to do it correctly than to rush.

Motion 15-02-23-03 (Keane/Hayon): Moved, seconded, and passed (4-0; Hur excused) that the Ethics Commission hold the necessary IP meetings that staff determines are necessary to build a record relating to this matter and that the Commission discuss the matter at its next meeting to put the matter on the ballot for the voters of San Francisco.

Vice-Chairperson Renne renewed his request that staff draft proposed language that the Commission should recommend to go on the ballot.

2. Fundraising and/or bundling reporting.

Deputy Executive Director Mainardi explained that the proposal would require individuals who engage in a certain level of fundraising and/or bundling for candidates to report activity. He stated that the Commission would need to decide what the proposed threshold would be for reporting. He explained that lobbyists are already required to report fundraising for candidates as the risk for quid pro quo corruption is particularly great.

Commissioner Keane recommended that staff move forward on this issue. He suggested staff to draft proposed regulations that would address the bundling problem with some teeth. Vice-Chairperson Renne suggested that the bundler would have to be someone who is seeking favors from the City, as many individuals support candidates who never lobby or do business with the City. Deputy Executive Director Mainardi suggested that the Commission could require a monetary threshold or impose the disclosure requirement on the candidate committee.

Public Comment:

Larry Bush stated that City contractors are not currently prohibited from raising money for a candidate, even though that contractor may be prohibited from contributing to that candidate. He supported the amendment, so that the Commission would close the loophole.

Anita Mayo suggested that the additional reporting requirements should be on the recipient candidate committees and not donors.

Motion 15-02-23-04 (Keane/Andrews): Moved, seconded, and passed (4-0; Hur excused) that the Ethics Commission request staff to go forward and come back to the Commission with language relating to the regulation of bundling, sensitive to the concerns of not picking up some innocent member of the public.

3. Enhanced private right of action.

Deputy Executive Director Mainardi stated that this proposal, which would allow a successful plaintiff to recover half of any penalties imposed, was in the Civil Grand Jury's most recent report. He stated that similar provisions on the state level and in Los Angeles are not frequently used in those jurisdictions. Commissioner Hayon asked if someone may sue under current law. Deputy Executive Director Mainardi stated that a plaintiff may currently sue to force compliance, after hearing from the Commission and City Attorney's Office that they will not enforce the alleged violations.

Public Comment:

Larry Bush stated that public loses confidence when investigations take so long. He stated that there is some value in having something hanging over enforcement.

Robert van Ravenswaay stated that Proposition J had a provision allowing a plaintiff to recover 10% of any penalty and attorney's fees.

Anita Mayo stated that this amendment would appear to give the impression of something other than wanting to enforce compliance of the law. She stated that ensuring compliance with the law should be the priority of the Commission, City Attorney, and District Attorney and not bounty hunters.

4. Contribution bans for persons receiving a "public benefit" from the City.

Deputy Executive Director Mainardi explained the proposal. He stated that a contractor ban currently exists, but that this proposal would return to the previous ban on contributions from those seeking "benefits" from the City. He explained that this proposal would expand the ban to include decisions on permits, which are not currently covered by the ban. He also noted that the Commission would need to build a legislative record for this amendment, involving complicated housing and tax issues, in order to justify the limit.

Commissioner Keane suggested that the Commission move forward with this proposal. He suggested that staff draft proposed language for a regulation that would have some teeth.

Motion 15-02-23-05 (Keane/Hayon): Moved, seconded, and passed (4-0; Hur excused) that the Ethics Commission direct staff to draft language that will address the question of someone who is receiving a public benefit from the City not being allowed to engage in contributing or engaging in any other type of pay to play activity.

Public Comment:

Robert van Ravenswaay referred to the Civil Grand Jury report and its section on the history of Proposition J and its repeal.

Larry Bush stated that Proposition E was passed under the radar. He stated that he doubts anyone at the Board of Supervisors would sponsor this proposal.

Anita Mayo stated that the legislative digest for Proposition E specifically stated that it would delete the taxpayer language and that the ordinance was being more narrowly tailored to accomplish goals. She urged the Commission not to reenact any of the confusing portions of Proposition J.

5. Debarment as a penalty.

Deputy Executive Director Mainardi explained that this proposal would render a person ineligible from bidding or being considered for a City contract for a certain amount of time. He stated that this was a serious penalty and it may not be warranted and/or the City may have other interests. DCA Shen explained the debarment procedures which currently exist in Chapter 28 of the Administrative Code. He stated that Chapter 28 is not explicitly lined to the Ethics Commission enforcement process, but that the Commission could try to incorporate debarment as part of a settlement.

Public Comment:

Larry Bush stated that the federal government has debarment and it is a serious tool not to be used frivolously. He objected to the other procedures as the process does not happen in public.

Anita Mayo stated that debarment would be a harsh penalty when applied to a negligent campaign finance violation. She stated that debarment should only occur with intentional violations of law.

Kevin Heneghan spoke against the proposal to add debarment to CFRO. He stated that the current City process could seek debarment regarding serious violations.

6. Slate Mailer filings.

Deputy Executive Director Mainardi explained that slate mailer organizations file campaign statements with the Secretary of State. He stated that currently courtesy copies are filed with the Department of Elections and this proposal would require those copies to be filed with the Ethics Commission instead.

Public Comment:

Larry Bush stated that the clerk at the Department of Elections does not sort out San Francisco submissions and it is difficult to find filings for San Francisco candidates.

Motion 15-02-23-06 (Hayon/Keane): Moved, seconded, and passed (4-0; Hur excused) that the Ethics Commission endorse action to make the change possible.

Vice-Chairperson Renne stated that the Commission asked staff to take further action on 1, 2, 4, and 6. Deputy Executive Director Mainardi stated that staff would draft proposed language for the first item, begin the interested persons process, and submit the draft language for discussion at the Commission's March meeting. He also stated that staff would present a calendar for all of the proposals so that the Commission may review, comment, and/or modify.

Public Comment:

Robert van Ravenswaay expressed support for the calendar.

VII. Discussion and possible action regarding an amendment to the changes to the San Francisco Campaign Finance Reform Ordinance which were approved by the Commission at its January 26, 2015 meeting.

Deputy Executive Director Mainardi stated that staff omitted language from its draft proposal of section 1.162(a)(3), regarding electioneering communications, which the Commission approved at its last meeting. He asked the Commission to approve the omitted language.

Public Comment:

None.

Motion 15-02-23-07 (Andrews/Hayon): Moved, seconded, and passed (4-0; Hur excused) that the Ethics Commission adopt the amended corrections.

VIII. Discussion with City Attorney's Office regarding potential litigation against local committees, including Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor, for violations of local campaign finance laws.

Deputy Executive Director Mainardi recused himself and sat with the public.

Public Comment:

Michael Garcia, former Ethics Commissioner and current member of the Citizens' General Obligation Bond Oversight Committee, stated that he also ran for office and also had Chris Lee as a campaign consultant. He stated that Supervisor Farrell had a reasonable expectation that Mr. Lee would act in good faith and exercise a duty of loyalty. He stated that Mr. Lee violated campaign finance laws and breached his fiduciary duty to Supervisor Farrell. He stated that the FPPC did not find Supervisor Farrell to be culpable. He stated that any action to find violations against Supervisor Farrell would be a waste of City resources, as he was exonerated at the FPPC. He suggested that the Commission take no action on this item.

Motion 15-02-23-08 (Keane/Andrews): Moved, seconded and passed (4-0; Hur excused) that the Ethics Commission move into closed session.

[The Commission recessed at 7:43 PM and returned into closed session at 7:50 PM.]

The Commission entered closed session at 7:50 PM. All members of the public left the hearing room. The members of the Ethics Commission (Chairperson Hur excused), Executive Director St. Croix, DCA Shen, and Ms. Argumedo remained in the hearing room. The Commission returned to open session at 8:48 PM.

Motion 15-02-23-09 (Keane/Andrews): Moved, seconded and passed (4-0; Hur excused) that the Ethics Commission keep confidential the matters discussed in closed session and

request that Supervisor Farrell file a response to the Commission no later than March 15, 2015 to the forfeiture letter.

Public Comment:

None.

Vice-Chairperson Renne stated that the Commission requested a response from Supervisor Farrell regarding the forfeiture letter, no later than March 15, 2015.

IX. Discussion and possible action on the minutes of the Commission's meeting of January 26, 2015.

Motion 15-02-23-10 (Andrews/Hayon): Moved, seconded and passed (4-0; Hur excused) that the Ethics Commission adopt the minutes of the Commission meeting of January 26, 2015, as written.

X. Discussion of Executive Director's Report.

Executive Director St. Croix reminded the Commissioners that the Forms 700 and Sunshine/Ethics forms are due by April 1, 2015. He stated that the Commission will begin interested persons' meetings regarding searchable Form 700 on Friday. He also stated that staff had met with the Language Access office and the documents and cost to translate have been identified. He stated that the Commission may need to ask for a small supplement appropriation.

Public Comment:

None.

XI. Items for future meetings.

Public Comment:

None.

XII. Adjournment.

Motion 15-02-23-11 (Keane/Andrews): Moved, seconded and passed (4-0; Hur excused) that the Ethics Commission adjourn.

Public Comment:

None.

The Ethics Commission adjourned the meeting at 8:54 PM.

